

THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

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THE RECORD is published at the House of the Association, 42 West 44th Street, New York 36.

Volume 9

February 1954

Number 2

Association Activities

AT THE January Stated Meeting of the Association a report by the Special Committee on the Proposed Zoning Law, Phillip W. Haberman, Jr., Chairman, was approved and the following resolution adopted:

BE IT RESOLVED, that in the opinion of this Association, the present Zoning Resolution of the City of New York is inadequate and should be replaced; and be it further

RESOLVED, that in the opinion of this Association the proposed Zoning Resolution prepared by Harrison, Ballard & Allen is a proper and suitable replacement except that

1. The proposed Resolution should be amended so as to provide that wherever a specified period is prescribed for the termination of a non-conforming use, it shall be mandatory upon the Board of Standards and Appeals to grant a suitable extension thereof if it finds that such prescribed period is unreasonable or inadequate for the amortization of the special value resulting from such non-conforming use;

2. The proposed Resolution should be amended so as to provide that any new uses adopted by the City Planning Commission under Section 1615 shall become effective only when approved as provided in Section 200 of the New York City Charter.

3. This Association recognizes that the proposed Resolution may be in need of relaxation as to some of the formulae governing building shapes and land uses. It expresses no judgment on such questions, but recommends that such further study thereof as may be appropriate be promptly authorized and pursued;

and be it further

RESOLVED, that subject to the preceding resolution, this Association endorses the proposed Zoning Resolution prepared by Harrison, Ballard & Allen and recommends its adoption.

The meeting also approved the recommendation of the Committee on the Municipal Court of the City of New York, William G. Mulligan, Chairman, that Arthur Wachtel be found qualified for appointment to the Municipal Court.

Louis M. Loeb, Chairman of the Committee on the Judiciary, offered the following resolutions which were adopted:

RESOLVED, that this Association urges the nomination by all parties and the election in November of Supreme Court Justice Van Voorhis as Associate Judge of the Court of Appeals.

RESOLVED, that this Association recommends the re-nomination by all parties and the reelection of the following members of the Judiciary at the elections which are to be held this November:

The Honorable Joseph M. Callahan, Justice of the Supreme Court, Appellate Division, First Department

The Honorable Benjamin F. Schreiber, Justice of the Supreme Court, First District

The Honorable Jacob Gould Schurman, Jr., Judge of the Court of General Sessions

Mr. Loeb noted that the following judges' terms will expire this year but who are ineligible for reelection because of having reached the mandatory age: The Honorable Edward S. Dore, Justice of the Supreme Court, Appellate Division, First Department; The Honorable Edward J. Glennon, Justice of the Supreme Court, Appellate Division, First Department; The Honorable Eugene L. Brisach, Justice of the Supreme Court, First District; The Honorable Ernest E. L. Hammer, Justice of the Supreme Court, First District; The Honorable Henry S. Schimmel, Justice of the City Court (New York County); and The Honorable William S. Evans, Justice of the City Court (Bronx County).

Mr. Loeb expressed the Association's appreciation of the distinguished services which have been rendered by these members of the judiciary and stated that the Committee on the Judiciary would urge the leaders of the major political parties to nominate worthy and outstanding successors to fill the vacancies which will be created.



ON JANUARY 29, a subcommittee of the Senate Judiciary Committee held hearings in Washington on a joint resolution introduced by Senator John Marshall Butler of Maryland which proposes amendments to the Constitution of the United States relating to the composition and jurisdiction of the Supreme Court. The proposed amendments, were originally suggested to Senator Butler by the Association's Special Committee on the Federal Courts, of which Edwin A. Falk is Chairman. The amendments also have the approval of the American Bar Association. The amendments would fix the number of justices of the Court at nine, make retirement compulsory at the age of 75,

render future justices ineligible to become President or Vice President for five years after leaving the Court and, in constitutional cases, remove from the Congress its present power to impair the appellate jurisdiction of the Court. Among those who testified in favor of the proposals were The Honorable Owen J. Roberts, former Justice of the Supreme Court, and Harrison Tweed.



THE COMMITTEE on Medical Jurisprudence, Julius Isaacs, Chairman, has transmitted to the Presiding Justice of the Appellate Division for the First Department, recommendations for a rule of court which would provide for the proper uniform protection of hospital records, subpoenaed to the Court.



IN THIS number of THE RECORD there is published a report by the Association's Committee on Uniform State Laws, W. Hugh Peal, Chairman, which deals with the present status of the Code in the State of New York, its legislative history in other states in 1953 and the changes which have been approved by its sponsors since the publication of the official text and comments in 1952.

The Law Revision Commission will hold public hearings on the proposed Uniform Commercial Code in the Byrne Room at the House of the Association, on the following dates: February 15 (Art. 2); March 1 and 2 (Art. 3 and 4); March 15 (Art. 7); March 22 (Art. 9); March 23 (Art. 5, 6, 8).



IN MID-SEPTEMBER, the President of the Association received a letter dated at Paris, France, September 9th, and an invitation dated June 21st, 1953, from the "International Conference of Lawyers for the Defence of Democratic Liberties," to attend a conference in Brussels, Belgium, on November 12th to 15th.

Before the Association could take any action the dates of the conference were changed to January 4th-8th, 1954, its site was

changed to Vienna and another invitation to the postponed conference was received by the President on December 22, 1953.

Mr. Webster's reply, which was mailed on December 31, 1953, follows:

Messrs. Giuseppe Nitti

John Elton

Gerard Lyon-Caen

Initiating Committee

International Conference of Lawyers

for the Defence of Democratic Liberties

Ehrbar-Sale

4 Bezirk

Muhlgasse 30

Vienna, Austria

Dear Sirs:

I have received, as President of The Association of the Bar of the City of New York, your invitation to the "International Conference of Lawyers for the Defence of Democratic Liberties" which you are sponsoring, and which is scheduled to be held in Vienna from January 4 to 8, 1954. I note from the invitation that you plan to have present lawyers from the Soviet Union and from other Communist countries.

I have read the agenda and statement of principles to be considered at the proposed meeting, and noted in particular the following paragraph:

"Guarantees of freedom of opinion and association, the principles of universal suffrage, *the right of peoples to self-determination and a full life*, the independence of the judiciary, the rights of the defence, the arbitrary powers of the police, abuse of preventive, administrative or police detention: all these things concern mankind and directly engage our responsibility as lawyers." (*Italics mine*).

Such information as is made available by the Soviet Union and other Communist countries would indicate that these principles are not recognized in those countries. This information includes the report published by the Soviet Union only last week with respect to the trial and execution of Beria and his associates, which is another instance of the so-called purge trial technique which was adopted in Russia before World War II. There have been similar instances in other Communist countries, such as the Mindszenty trial in Hungary and the Oatis trial in Czechoslovakia. On the basis of published information, all these trials follow a common pattern in which the accused is denied counsel of his own choosing; is submitted to cruel and inhuman treatment in order to extort a confession; is denied the right to call upon witnesses to testify in his behalf; and is tried and convicted in a closed proceeding without right of appeal. It is our understanding that the reason

for these procedures is that in Russia and in other Communist countries the Communist party is all-important and that all the branches of law enforcement, including the judiciary, are subordinated to party directives. Under such a system we cannot see how the principles above stated can be attained.

It would therefore be of interest to the members of our Association, and to lawyers everywhere who stand for the rights of the individual, if inquiries could be directed to the delegates from the Soviet Union and other Communist countries participating in the coming Conference, as to how they reconcile these procedures with your principles above stated. Under the term "The Independence of the Judiciary" inquiry could be made as to the independence of the judges at these trials; whether they were free from interference either by the Communist party or by the executive and whether they had judicial experience. Under the term "The Rights of the Defence," inquiry could be made as to whether the accused received a fair and public trial; had the right to select counsel of his own choosing; was permitted to require the presence of witnesses and documentary evidence in his favor and to cross examine the prosecution's witnesses; and to have excluded confessions extorted by torture, duress, or other forms of cruel and inhuman treatment. The foregoing is merely illustrative as it seems to me the Conference's agenda would permit a thorough inquiry into the so-called purge trials.

If such inquiries should be made, and you will inform me of the results, I will be happy to make the information available to our membership and to other bar associations in the United States.

Yours very truly,

(Sgd.) BETHUEL M. WEBSTER



THE PRESIDENT of the Association and Louis M. Loeb, Chairman of the Association's Committee on the Judiciary, issued the following statement to the press in connection with the appointment of John M. Harlan to the United States Court of Appeals, Second Circuit:

"President Eisenhower and Attorney General Brownell are to be congratulated upon the appointment of John M. Harlan to the United States Court of Appeals for the Second Circuit. This is an ideal appointment and Mr. Harlan is a worthy successor to the long line of judges who have made this one of the greatest courts in the country. From 1925 to 1927 he served as Assistant United States Attorney for the Southern District of New York under Emory R. Buckner. He has been a Vice- President of The Association of the Bar of the City of New York and a Chairman of

its Committee on the Judiciary. Mr. Harlan is a graduate of Princeton University and Balliol College, Oxford University, where he was a Rhodes Scholar. During World War II Mr. Harlan was a Colonel in the 8th Air Force and was awarded the Legion of Merit and the Croix de Guerre with Palm by France and Belgium. Mr. Harlan is the grandson of Justice John M. Harlan, who served on the Supreme Court of the United States from 1877 to 1911. He is a member of the firm of Root, Ballantine, Harlan, Bushby & Palmer. Mr. Harlan has had a distinguished career at the Bar as a trial lawyer in important litigation and comes to judicial service at an age when he can be expected to contribute many years of service to the court. Mr. Harlan will make a great judge."



THE COMMITTEE on Law Reform, George G. Gallantz, Chairman, has under consideration the following subjects: Federal wire tapping; amendments to Section 90 of the Judiciary Law; the biennial registration of lawyers, as proposed by the New York State Bar Association; and the question of the advisability of a public defender law.



IN CONNECTION with its investigation into calendar delay, the Committee on the City Court of the City of New York, Mathias F. Correa, Chairman, had as guests of the Committee at the December meeting the following Justices of the City Court: Justice Solomon Boneparth, Justice Samuel C. Coleman, Justice William S. Evans, Justice Vincent A. Lupiano, Justice Arthur Markewich, Justice Francis E. Rivers and Justice Morris E. Spector.

During the course of the meeting a full discussion was had of the so-called "Bronx System." The Committee also has under consideration the following subjects: City Court costs; inter-court assignment of judges; inter-court transfer of cases; cases involving insurance companies; cases involving the City of New York; special referees; supplemental proceedings; and administrative delays.

THE FOLLOWING publishers of law lists and legal directories have received certificates of compliance from the Standing Committee on Law Lists of the American Bar Association for their 1954 editions.

Commercial Law Lists

A. C. A. List

Associated Commercial Attorneys
List
165 Broadway
New York 6, New York

American Lawyers Quarterly

The American Lawyers Company
1712 N.B.C. Building
Cleveland 14, Ohio

B. A. Law List

The B. A. Law List Company
161 West Wisconsin Avenue
Milwaukee 3, Wisconsin

Clearing House Quarterly

Attorneys National Clearing
House Co.
1645 Hennepin Avenue
Minneapolis 3, Minnesota

The Columbia List

The Columbia Directory
Company, Inc.
320 Broadway
New York 7, New York

The Commercial Bar

The Commercial Bar, Inc.
521 Fifth Avenue
New York 17, New York

C-R-C Attorney Directory

The C-R-C Law List Company,
Inc.
50 Church Street
New York 7, New York

Forwarders List of Attorneys

Forwarders List Company
38 South Dearborn Street
Chicago 3, Illinois

The General Bar

The General Bar, Inc.
36 West 44th Street
New York 36, New York

International Lawyers Law List

International Lawyers Company,
Inc.
33 West 42nd Street
New York 18, New York

The National List

The National List, Inc.
75 West Street
New York 6, New York

Rand McNally List of Bank

Recommended Attorneys
Rand McNally & Company
P.O. Box 7600
Chicago 80, Illinois

Wright-Holmes Law List

Wright-Holmes Corporation
225 West 34th Street
New York 1, New York

General Law Lists

American Bank Attorneys

American Bank Attorneys
18 Brattle Street
Cambridge 38, Massachusetts

The American Bar

The James C. Fiffeld Company
121 West Franklin
Minneapolis 4, Minnesota

General Law Lists—continued

The Bar Register
The Bar Register Company, Inc.
One Prospect Street
Summit 1, New Jersey

Campbell's List
Campbell's List, Inc.
905 Orange Avenue
Winter Park, Florida

International Trial Lawyers
Central Guarantee Company, Inc.
141 West Jackson Boulevard
Chicago 4, Illinois

The Lawyers Directory
The Lawyers Directory, Inc.
17 South High Street
Columbus 15, Ohio

The Lawyers' List
Law List Publishing Company
111 Fifth Avenue
New York 3, New York

Russell Law List
Russell Law List
10 East 40th Street
New York 16, New York

General Legal Directory

Martindale-Hubbell Law Directory
Martindale-Hubbell, Inc.
One Prospect Street
Summit 1, New Jersey

Insurance Law Lists

Best's Recommended Insurance
Attorneys
Alfred M. Best Company, Inc.
75 Fulton Street
New York 7, New York

Hine's Insurance Counsel
Hine's Legal Directory, Inc.
38 South Dearborn Street
Chicago 3, Illinois

The Insurance Bar
The Bar List Publishing Company
State Bank Building
Evanston, Illinois

The Underwriters List
Underwriters List Publishing
Company
308 East Eighth Street
Cincinnati 2, Ohio

Probate Law Lists

Recommended Probate Counsel
Central Guarantee Company, Inc.
141 West Jackson Boulevard
Chicago 4, Illinois

Sullivan's Probate Directory
Sullivan's Probate Directory, Inc.
84 Cherry Street
Galesburg, Illinois

State Legal Directories

The following state legal directories published by The Legal Directories
Publishing Company, 1072 Gayley Avenue, Los Angeles 24, California

Arkansas-Louisiana Legal Directory Indiana Legal Directory

Delaware-Maryland-New Jersey
Legal Directory Iowa Legal Directory

Florida-Georgia Legal Directory Kansas Legal Directory

Illinois Legal Directory Kentucky-Tennessee Legal Directory

Missouri Legal Directory

State Legal Directories—continued

Mountain States Legal Directory
(for the States of Colorado,
Idaho, Montana, New Mexico,
Utah and Wyoming)

New York Legal Directory

Ohio Legal Directory

Oklahoma Legal Directory

Pacific Coast Legal Directory (for
the States of Arizona, California,
Nevada, Oregon and Washing-
ton)

Pennsylvania Legal Directory

Texas Legal Directory

Wisconsin Legal Directory

Foreign Law Lists

Canadian Credit Men's Commercial
Law and Legal Directory
Canadian Credit Men's Trust As-
sociation, Ltd.

137 Wellington Street, West
Toronto, Ontario, Canada

Canadian Law List

Cartwright & Sons, Ltd.

24 Adelaide Street, East
Toronto, Ontario, Canada

Empire Law List

Butterworth & Co. (Publishers)
Ltd.

88 Kingsway
London W. C. 2, England

The International Law List

L. Corper-Mordaunt & Company

Pitman House

Parker Street

London, W. C. 2, England

Kime's International Law Directory

Kime's International Law Direc-
tory, Ltd.

4 New Zealand Avenue
London, E. C. 1, England

The Calendar of the Association for February and March

(As of January 28, 1954)

- February 1 Dinner Meeting of Committee on Federal Legislation
Dinner Meeting of Committee on Medical Jurisprudence
Dinner Meeting of Committee on Professional Ethics
- February 2 Dinner Meeting of Committee on Legal Aid at Harvard Club
Meeting of Section on Litigation
Meeting of Committee on State Legislation
- February 3 Dinner Meeting of Executive Committee
Meeting of Section on Wills, Trusts and Estates
- February 4 Dinner Meeting of Committee on Admiralty
Dinner Meeting of Committee on Domestic Relations Court
Dinner Meeting of Law Reform Committee Subcommittee on Section 90 of the Judiciary Law
- February 8 Dinner Meeting of Committee on Copyright
Dinner Meeting of Committee on Municipal Affairs
- February 9 Meeting of Committee on State Legislation
- February 10 Meeting of Section on Labor Law
Dinner Meeting of Committee on Municipal Court
Dinner Meeting of Committee on Taxation
- February 15 Dinner Meeting of Committee on Bill of Rights
Meeting of Library Committee
- February 16 Dinner Meeting of Committee on Bankruptcy and Corporate Reorganizations
Meeting of Committee on State Legislation

- February 17 Meeting of Committee on Admissions
Meeting of Committee on Foreign Law
Dinner Meeting of Committee on Insurance Law
Dinner Meeting of Committee on Courts of Superior
Jurisdiction
Meeting of Section on Taxation
- February 18 Meeting of Section on Jurisprudence and Comparative
Law
- February 23 Dinner Meeting of Committee on International Law
Meeting of Committee on State Legislation
- February 24 *Round Table Conference, 8:15 P.M.* Guest to be an-
nounced later
- February 25 Meeting of Section on Trade Regulation
Dinner Meeting of Committee on Trade Regulation
and Trade Marks
- March 1 Dinner Meeting of Committee on Federal Legislation
Dinner Meeting of Committee on Medical Jurispru-
dence
Dinner Meeting of Committee on Professional Ethics
- March 2 Meeting of Committee on State Legislation
- March 3 Dinner Meeting of Executive Committee
Meeting of Section on Wills, Trusts and Estates
- March 4 Dinner Meeting of Committee on Domestic Relations
Court
- March 8 Dinner Meeting of Committee on Municipal Affairs
- March 9 *Stated Meeting of the Association, 8:00 P.M. Buffet
Supper, 6:15 P.M.*
Meeting of Committee on State Legislation
- March 10 Dinner Meeting of Committee on Insurance Law
Meeting of Section on Labor Law
- March 11 *Opening of Photographic Show. 4:30 P.M.*
- March 15 Meeting of Library Committee

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| March | 16 | Dinner Meeting of Committee on Bankruptcy and
Corporate Reorganizations
Meeting of Committee on State Legislation |
| March | 17 | Meeting of Committee on Admissions
Dinner Meeting of Committee on Foreign Law |
| March | 22 | Dinner Meeting of Committee on Bill of Rights |
| March | 23 | Meeting of Section on Litigation
Meeting of Committee on State Legislation |
| March | 24 | Dinner Meeting of Committee on Courts of Superior
Jurisdiction
Meeting of Section on Jurisprudence and Comparative
Law
<i>Round Table Conference, 8:15 P.M.</i> Guest to be an-
nounced later |
| March | 25 | Meeting of Section on Trade Regulation
Dinner Meeting of Committee on Trade Regulation
and Trade Marks |
| March | 30 | Meeting of Committee on State Legislation |
| March | 31 | <i>Ninth Annual Association Night, 8:30 P.M.</i> |

Hotchpotch or Integration

By BETHUEL M. WEBSTER

*Notes for a Speech at the Annual Meeting
of the New York State Bar Association
January 29, 1954*

The catalogue of complaints directed at our judicial system is impressive—calendar congestion, mounting delay in the trial of tort cases, cost of appeals and of litigation in general, multiplicity of courts with overlapping jurisdiction, outmoded rules of practice and procedure, political influence and patronage.

The most critical concern of the moment is undue delay in the trial of personal injury cases before juries. For some years delays of three years and more have been commonplace in New York City—a respect in which, unhappily, we lead the nation. New York City is not the sole delinquent: As of June 30, 1953, 19 counties were nine months or more behind, an increase of 3 counties over the previous year.

In Kings delay in the trial of tort jury cases is 56 months, with New York and Queens not much better—42 and 43 months respectively. Think of it! A person hurt today must expect to wait five years or more for his case to be tried before a jury. How can witnesses recall details of events which occurred five years ago? What of the plaintiff who suffers an incapacitating injury and does not have savings to provide for himself and family?

The complaints have not gone unnoticed. We have been especially fortunate in the leadership of the Presiding Justices of the Appellate Divisions in New York City, Justices Peck and Nolan, and their colleagues on the Supreme Court. Action to deal with the problem of personal injury cases has been taken. That

I am indebted to the staff of The Association of the Bar of the City of New York's Special Committee on Studies and Surveys of the Administration of Justice, of which Edward S. Greenbaum is Chairman, and especially to Richard J. Powers, for information and suggestions contained in this speech.

action has reduced delay in the Supreme Court in New York City. In one year the backlog of jury cases pending in New York County was reduced by almost 50%—from 13,000 to 7,000. Last December in Kings, during a special calendar call in which all of the justices participated, approximately 5,000 cases were moved out of the Supreme Court.

We must face the fact, however, that our house is not in order. Our judicial system is not working smoothly or effectively. Measures taken, and being taken, are inadequate. They have plugged the holes and prevented a breakdown—they are not a cure.

The structure and operation of the system are at fault. In New York State there are 18 or more courts or groups of courts, each separately administered, each largely independent. Practice and procedure are governed in part by a variety of statutes relating to specific courts, in part by rules of various courts, and in part by rules of different branches of the Supreme Court sitting in the ten judicial districts or in the four judicial departments. Except for the control of the Legislature and the limited authority of the Presiding Justices of the four Appellate Divisions over courts within their jurisdiction, the courts are almost without direction. The lack of organization leads to inefficiency, delay, and high costs.

We cannot honestly deny the charge that the system is archaic, complex, expensive, and uncertain.

It is complex and uncertain because there are too many courts, too loosely integrated—if indeed they are integrated at all. Lawyers and litigants are perplexed by overlapping jurisdictions and procedures. It is said that the courts devote 10% or more of their time to questions of jurisdiction. Too much time is spent shuffling from one court to another in an effort to resolve an issue which, but for jurisdictional limitations, might have been dealt with in a single court. This is not right; it is not necessary.

I refer for illustration to Professor Gellhorn's recent report to a Special Committee of The Association of the Bar appointed to study the administration of the laws relating to the family. Pro-

fessor Gellhorn relates that no fewer than five different courts in the City of New York participate in considering one or another aspect of the family's interrelated problems:

"Neglect and delinquency reach the Children's Court. Support claims may involve the Supreme Court or the Family Court or the Court of Special Sessions. Desire to modify or dissolve the marital status leads to the Supreme Court. Disputes concerning custody of children go to the Supreme Court or in some circumstances to the Children's Court. Adoptions are primarily the concern of the Surrogate's Court, though the Children's Court also possesses a measure of jurisdiction. Intra-family disorderliness becomes a problem for the Home Term of the Magistrate's Court unless some other court snatches jurisdiction instead."

This need for integration and centralized administration was also demonstrated by calendar calls recently conducted in Manhattan and Brooklyn. The judges found that many personal injury actions were brought in the Supreme Court, when, because of the damages claimed, they should have been brought in one of the local courts.

In New York City there are three different courts in which a personal injury action may be brought. The only essential difference is the limit of monetary jurisdiction. The Municipal Court has jurisdiction up to \$3,000, the City Court up to \$6,000, and the Supreme Court has unlimited jurisdiction. It was thought that the recent constitutional amendment increasing the monetary jurisdiction would encourage lawyers and litigants to bring suit in lower courts where a more speedy trial might be had. The results to date have not been satisfactory. Lawyers still insist on instituting suits in the Supreme Court in the hope that juries will go along with their claims.

Our complex system is expensive. I doubt if anyone is possessed of the facts for an informed estimate of what it costs to operate and maintain the present system. It probably runs as high as forty

or fifty million dollars a year. The cost cannot be computed because the courts are financed by three units of government—state, county, and municipal—and there is no central agency to supervise the financing of the courts.

Surprisingly, the State contributes only about one-sixth. The City of New York contributes more than 50%. For the fiscal year 1953-4 the budget appropriation for the judiciary in New York City totaled \$24,000,000, exclusive of that portion of the salary of Supreme Court Justices paid out of the State Treasury. More than two-thirds of the judiciary budget represents salaries for the 300 judges and official referees and 3,500 court employees who staff the eight groups of courts in our City. *

The judiciary budget for the City of New York just about equals the budget for the entire federal judicial system. It costs ten to fifteen million dollars more per year to operate, staff, and maintain our state court system than it does all of the federal courts. The facts suggest that our system is expensive.

I doubt if anyone knows what our judicial establishment should cost. But it seems clear that an integrated and streamlined system would tend to reduce operating expenses, perhaps to the extent of several million dollars. That, of itself, would be worth while.

But the basic problem is that our court system is archaic—having its origin in the Constitution of 1846. The 1846 Convention was concerned with the haphazard and uncontrolled growth of the system and with its inability to satisfy the needs of changing times. And it did succeed in establishing the Supreme Court and Court of Appeals, as we know them today, and left the way open for the Appellate Divisions. To the extent that the Convention attempted to integrate the courts and reduce the number, its recommendations were sound and forward-looking.

The work of that Convention is a lesson for today. Stimulated by public dissatisfaction with the inertia and selfishness of a small but powerful group of judges who would not face the need for procedural changes and structural reorganization, the Convention planned to simplify the courts by establishing a single court

(sitting in divisions) in place of the growing number of existing courts. The Convention proposed two courts of original jurisdiction—a superior court and an inferior court. Intermediate courts of original jurisdiction, such as the county courts and the court of common pleas, were to be merged. In their place a Supreme Court with unlimited original jurisdiction in law and equity was recommended. Such a court would be statewide. A Court of Appeals was recommended, its jurisdiction limited to appeals. In broad outline, you have the framework of our present system.

The recommendation of the Convention met with limited success. By a margin of one vote the proposal to abolish the county courts was defeated. Even in those days, apparently, vested interests and reaction prevailed. But of great potential significance was the provision of the 1846 Constitution which authorized the Legislature to establish local courts of limited civil and criminal jurisdiction. That provision is the source of much of today's complexity and confusion.

As the State grew in population and commercial activity, the need for courts of inferior jurisdiction in metropolitan areas must have seemed imperative. The desirable elements of uniformity and integration in the administration of the courts gave way to expediency.

The trend away from a centralized court system may have been necessary and inevitable. Certainly, the courts had to keep pace with changing times just as they must today. The difficulty was, however, that as the new courts of inferior jurisdiction were established little thought was given to their organization, makeup, and jurisdiction in relation to existing courts. Thus, the courts developed without plan or design. Despite occasional efforts to revamp the structure, not much has been accomplished. The consequence is that today there is no system at all.

The only bright spot in our present system is the two courts of statewide jurisdiction—the Supreme Court with the Appellate Divisions and the Court of Appeals. These are structurally sound, and current in their work except for tort jury trials. But they are administratively weak. Each Justice is, in large measure, master

of his performance and his fate and, consequently, his services are not put to maximum use on behalf of the system as a whole.

Serious need exists for coordinated administrative authority and facilities and a rule-making power. These exist to a limited degree at present in each judicial district and department but must be strengthened and extended to cover the system as a whole if the business of the courts is to be transacted efficiently and effectively.

The local courts are the soft spots. There, reorganization is essential if we are to achieve prompt, efficient, and economical administration of justice. The local courts, established by special acts or city charters, number in the thousands and vary in organization, practice, procedure, standards, efficiency and competence of personnel. In New York City, for example, there is a County Court, City Court, Court of Special Sessions, Magistrate's Court, and others in each of the five counties. It is apparent that nothing short of a thorough reorganization can bring to these courts common practice or common standards.

With a truly statewide judicial system organized and directed by a central administrative authority, it would be possible to maintain uniformly high standards of administration throughout the State; to equalize the workloads of the various judges and relieve congested dockets by assigning judges among the various courts as the pressure of business requires; to obtain the economies which would result from centering the business administration of the courts in one office; and to establish a uniform procedure and practice which would eliminate needless technicalities, simplify trials, and encourage settlements.

I do not suggest—though I should like to—that there should be only two courts of original jurisdiction. A State such as New York may have need of some specialized courts. The specialized problems of family law come to mind. But it does seem to me that it would be possible to reduce the number of civil and criminal courts. There is no need for three or more distinct and separate trial courts of varying civil and criminal jurisdiction in New York. If it is desirable to deal with civil and criminal matters in

separate courts—and I doubt it—the number of such courts should be reduced and made statewide.

The basic object of any plan, then, would be to abolish most of the existing courts of inferior civil and criminal jurisdiction and to replace them with a statewide court of inferior jurisdiction. By this means the minor courts could be brought into the system without disrupting the higher court structure.

No one thinks that our court system could be perfected overnight. But the people of our state have an opportunity today, perhaps their last, to make a new attack. The Temporary Commission on the Courts is hard at work. Our Associations and others throughout the State are cooperating with them, and our hopes are high. When they have reached their conclusions, and made their reports, the support of Bench and Bar, and of the lay public, must be mobilized to assure that hopes are not again in vain.

Recent Decisions of the United States Supreme Court

By MARVIN SCHWARTZ and EDWIN M. ZIMMERMAN

THEATRE ENTERPRISES, INC. V. PARAMOUNT FILM DISTRIBUTING CORP., ET AL.

(January 4, 1954)

The Supreme Court laid to rest in the instant case the notion that "conscious parallelism" of business behavior constitutes a Sherman Act offense.

Petitioner owns and operates a motion picture theatre in a suburban neighborhood shopping district some six miles from the downtown Baltimore shopping district. Treble damages were claimed because the respondent motion picture producers and distributors had allegedly conspired to restrict first-run films to the downtown Baltimore theatres, thus confining petitioner's suburban theater to subsequent runs and unreasonable clearances. Petitioner introduced no direct evidence of an illegal agreement among the defendants but contended that conscious unanimity of action by the defendants should be measured against the background of findings in prior litigation that the same respondents had conspired to impose a uniform system of runs and clearances without adequate explanation to sustain them as reasonable restraints of trade (the *Paramount* case; see 334 U.S. 131, 339 U.S. 974). A jury in the United States District Court for the District of Maryland returned a general verdict for the defendants and the Court of Appeals for the Fourth Circuit affirmed, 201 F. 2d 306.

On certiorari the judgment of dismissal was affirmed, the Supreme Court rejecting petitioner's contentions that the trial judge erred in his instructions to the jury and should have directed a verdict in petitioner's favor.

With respect to the latter contention, Justice Clark wrote for the Court that

"The crucial question is whether respondents' conduct toward petitioner stemmed from independent decision or from an agreement, tacit or express. To be sure, business behavior is admissible circumstantial evidence from which the fact finder may infer agreement. . . . But this court has never held that proof of parallel business behavior conclusively establishes agreement or, phrased differently, that such behavior itself constitutes a Sherman Act offense. Circumstantial evidence of consciously parallel behavior may have made heavy inroads into the traditional judicial attitude toward conspiracy; but 'conscious parallelism' has not yet read conspiracy out of the Sherman Act entirely."

Justice Clark said of the *Paramount* decrees, which were received in evidence pursuant to section 5 of the Clayton Act, that they only were prima facie evidence of a conspiracy embracing a particular time and a particular place. Additional evidence was required to relate the *Paramount* conspiracy to Baltimore and to the claimed damage period.

Mr. Justice Black dissented on the ground that the instructions to the jury deprived petitioner of a large part of the benefits afforded by section 5 of the Clayton Act.

Mr. Justice Douglas did not participate in the decision.

GENERAL PROTECTIVE COMMITTEE V. S.E.C.

(January 4, 1954)

In this case, the interrelationship between two provisions of the Public Utility Holding Company Act which each provide a separate avenue into the courts was examined and clarified.

Section 11(e) of the Public Utility Holding Company Act permits a registered holding company to submit to the Securities and Exchange Commission, voluntarily, a plan for reorganization which would reshape the system of companies into an organization permitted by the Act. Section 11(e) also provides that the Commission at the request of the holding company may apply to a court to enforce and carry out the terms and provisions of the submitted plan.

Section 24(a) provides that any person aggrieved by an order issued by the Commission under the Act may obtain a review of such order in a federal Court of Appeals.

After a series of steps for the purpose of complying with the Public Utility Holding Company Act, the United Corporation submitted a plan under Section 11(e) which contained four provisions: the sale by United of certain securities which it held; the offer by United of portfolio securities or, in certain cases, cash to stockholders who wished to withdraw from the company; the cancellation of outstanding option warrants for the purchase of common stock; and the amending of the charter and by-laws to provide for cumulative voting in the election of directors and a 50% quorum at stockholders meetings. The Commission approved the plan but stated that the provisions for the cancellation of the warrants and amendment of the charter and by-laws would not be operative until a United States District Court, upon application as provided in Section 11(e), entered an order enforcing those provisions.

Some common stockholders thereupon filed a petition for review in the Court of Appeals under Section 24(a) of the Act. They challenged the provisions of the plan relating to the sale by United of some of its holdings and the offer by United to those of its stockholders who wish to withdraw. They also requested that the other two provisions, which the Commission had designated as the subjects of an enforcement order by a District Court under Section 11(e), be approved by the Court of Appeals. At this point a protective

committee representing holders of the option warrants which would have been wiped out by one of these latter provisions of the plan, moved to intervene in the Court of Appeals claiming the forfeiture of the warrants was not justified. The Commission and the Company opposed the intervention on the ground that by reason of the Commission's order and as a result of the operation of Section 11(e) of the Act, only the District Court had jurisdiction to review the provision relating to the elimination of warrants. The Court of Appeals, however, permitted the intervention, holding that so long as the Commission had not actually applied to a District Court under Section 11(e) to enforce the provision of the plan in question, the Court of Appeals had exclusive jurisdiction to review the entire plan, including that provision. The Court of Appeals further held that if it were to affirm or modify the order of the Commission approving the plan, the District Court upon application to it under Section 11(e) for enforcement would have no function except to enforce the plan as modified, since the ruling by the Court of Appeals on the fairness of the plan would be binding. The Court of Appeals thereupon reviewed the entire plan, including the provisions which were to be enforced by order of the District Court, and found the plan fair and equitable in all respects and affirmed the Commission's order.

The Supreme Court in a unanimous decision written by Justice Douglas held that where the Commission reserved for enforcement proceedings in the District Court under Section 11(e) certain provisions of the plan, the Court of Appeals was restricted in its review under Section 24(a) to those provisions not so reserved. Hence, in this case the Court of Appeals did not have jurisdiction to review questions pertaining to the elimination of the option warrants and to the amendment of the charter and by-laws, but did have authority to review the provisions relating to the sale of securities and the withdrawal offer.

Justice Douglas asserted that Section 11(e) was meant by Congress to perform a somewhat different function than Section 24(a). Section 11(e) applies only to the voluntary reorganization plans submitted by a holding company to the Commission in order to comply with the Act, and gives the registered holding company the standing to ask that the enforcement machinery of the Act be placed behind its voluntary plan. The Commission may or may not accede to the Company's suggestion that court enforcement be obtained, and the nature of the problems implicit in the operation of the plan will determine the manner in which the Commission exercises its discretion in deciding on the Company's request for enforcement.

Justice Douglas noted that in some cases the Commission might refuse to request enforcement of less than all phases of a plan. Where the several aspects of a plan, however, were not intimately related, as in this case, the Commission may request enforcement only as to some provisions of the plan. Once the Commission decided to request enforcement, the functioning of the District Court in the effectuating of the plan was not to be frustrated by the presentation of grievances to the Court of Appeals under Section 24(a).

In this case the result is that the common stockholders objecting to the withdrawal offer take their grievance to the Court of Appeals while the option warrant holders must state their objections in the District Court. But this to Justice Douglas is not objectionable since the Company could have taken the steps of selling its securities, or of giving stockholders the opportunity to withdraw, in separate stages, independent of a voluntary over-all plan under Section 11(e). In that case, aggrieved stockholders would clearly have had no recourse to the courts except through Section 24(a).

Congress did not provide that all or none of the provisions of the plan of voluntary reorganization must go into the enforcement proceedings under Section 11(e). Justice Douglas suggests that the history of voluntary reorganizations may have been such that litigious issues were not expected to be numerous and that only selected phases were thought to require enforcement proceedings. Hence, under the procedure prescribed by Congress as interpreted in this case, both the common stockholder and the option holder have their day in court, albeit in different courts performing different functions.

GARNER V. TEAMSTERS UNION

(December 14, 1953)

A Pennsylvania statute which declares it to be an unfair labor practice for an employer to compel his employees to belong to a union has been interpreted by courts in Pennsylvania also to prohibit a union from picketing an employer for the purpose of coercing him to compel his employees to belong to a union. The federal Labor Management Relations Act has a provision which prohibits picketing by a union for such a purpose. The question of the relationship between these two statutes was raised in this case when, in a labor controversy affecting interstate commerce and involving picketing of the above nature, an injunction against the picketing was issued by a state court. The Supreme Court of Pennsylvania reversed the lower court which issued the injunction, and held that state remedies were precluded because the federal statute had occupied the field. On certiorari, the Supreme Court of the United States affirmed the Supreme Court of Pennsylvania in a unanimous decision.

Justice Jackson wrote the opinion for the Court and simplified consideration of the problem by eliminating as inapplicable in the case such considerations as the historical power of a state over public safety or use of streets and highways, or the existence of an hiatus in the federal regulatory scheme which would leave a vacuum unless state regulation was permitted, or the likelihood that the federal administrative agency would decline to exercise its power once its jurisdiction was invoked. He stated that Congress had seen fit to act with respect to this type of labor controversy and had provided the National Labor Relations Board with power to entertain the employer's grievance, issue a complaint and, pending a final hearing, seek an

injunction from a United States District Court to prevent irreparable injury.

To decide whether in these circumstances federal regulation was to be considered as exclusive, Justice Jackson turned to the structure of the federal statutory scheme. An examination of the federal legislation made it clear that Congress regarded a centralized administration of the rules of law governing labor controversies and the following of specific procedures in dealing with grievances as important. Justice Jackson pointed out that a "multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." Since the federal act pointed so strongly towards one central administration in this area, Justice Jackson held that a concurrent state administration of a parallel set of state laws had to fall by the wayside.

Justice Jackson next turned to the argument that the federal statute was concerned only with enforcement of a public right whereas the state equity powers were invoked by private parties to enforce private rights, and that the distinction between the public and private rights was such that federal occupancy of the one field did not prevent a state from exercising its conventional equity power in the other. To this he replied by pointing out that the Pennsylvania statute was as much concerned with the public right as was the federal act. Moreover, even should the distinction between the nature of the rights enforced by the two respective acts be accepted, it did not follow that state and federal authorities could act to supplement one another in cases of this type. Although the nature of the rights may be different, a conflict would remain in the application of the separate remedies of each statute upon the same activity. Under both systems of regulation there is the possibility of an injunction against picketing, and hence, according to Justice Jackson, unless the unrealistic assumption be made that both authorities would always agree as to whether picketing should continue or not, or that a state injunction would be automatically dissolved once the federal administrative agency acts, there is the likelihood of conflict. The detailed description in the federal act of a procedure for restraining specific types of picketing implies that other picketing was to be free of restraint, a policy which would be impinged upon were the state regulation argued for here permitted.

Justice Jackson concluded that the exercise of federal power for the protection of public or private rights became the law of the land and was not to be curtailed or extended by state procedure merely because some doctrine of private right was applied. The distinction between public and private rights was too unsettled and ambiguous to serve as a dividing line between federal and state power. If the public interest was found by Congress to require enforcement by official bodies rather than by private initiative, the latter will ordinarily be excluded unless Congress by express terms or by clear implication provided for the alternative or supplemental state remedies. Hence, in this case the petitioners were obliged to present their grievance to the National Labor Relations Board, and could not seek redress from a state tribunal.

It should be noted that the reasoning of Justice Jackson's opinion is such

that state action would, ordinarily, be precluded with respect to all activities affecting interstate commerce and constituting unfair labor practices under the federal statute. However, specific associated questions remain to be answered, among them being the problem of the remedy available to the federal Board to enforce its exclusive jurisdiction, the nature of the state action which is precluded, and the effect of a policy of the federal Board of declining to exercise its jurisdiction in certain matters. An answer to the first of these questions may be forthcoming when *Capital Service, Inc. v. NLRB*, no. 398, is decided, certiorari having been granted on the question of whether, once a state court has issued an injunction, a federal District Court could, at the request of the NLRB, enjoin on the ground of the exclusive federal jurisdiction, the enforcing of the state injunction. One or both of the next two questions may be answered by the decision in *United Construction Workers v. Laburnum Construction Corp.*, no. 188, where a state court tort suit based on acts constituting unfair labor practices under the federal statute was brought, and where, when certiorari was granted, the Government was invited to submit a memorandum setting forth NLRB policy in declining to exercise jurisdiction or in agreeing to the exercise of jurisdiction by a local body.

BANKERS LIFE & CASUALTY CO. V. HOLLAND

(November 30, 1953)

After five years of experience under the transfer provisions of title 28, United States Code (§§ 1404 and 1406) and persistent refusals by denial of certiorari to decide whether transfer orders were subject to interlocutory appellate review, the Supreme Court has held that a District Court transfer order entered pursuant to section 1406 may not be reviewed by mandamus.

The Courts of Appeals have held uniformly that transfer motions do not give rise to orders which are appealable, but the consensus of decision has been that such orders were reviewable by mandamus. The notable exception was the Third Circuit, where mandamus was held inappropriate if there was no question of the District Court's "power" to transfer and if the District Court exercised its discretion to grant or deny the transfer motion. *All States Freight, Inc. v. Modarelli*, 196 W. 2d 1010 (3d Cir. 1952). In the Second Circuit, transfer orders have been reviewed by mandamus with the unique qualification that if the District Court possessed "power" of transfer and did in its discretion order transfer of the case, review must be had in the Court of Appeals *ad quem*, that is, the Court embracing the district to which the action had been transferred. If, on the other hand, the District Court denied a transfer motion, mandamus was appropriate in the circuit embracing the district in which the motion was made, the circuit *a quo*. *Foster-Millburn Co. v. Knight*, 181 F. 2d 989 (2d Cir. 1950); *Magnetic Engineering Mfg. Co. v. Dings Mfg. Co.*, 178 F. 2d 866 (2d Cir. 1950).

In the instant case, petitioner's complaint in the Southern District of

Florida for treble damages under the antitrust laws named as defendants the insurance commissioners of Georgia and Florida, one other individual and four insurance companies doing business within the district. The Georgia commissioner was personally served in Florida and moved to dismiss the complaint as to him for improper venue.

The relevant venue statute, 15 U.S.C. §15, provides that treble damage actions may be brought "in the district in which the defendant resides or is found or has an agent." The Georgia commissioner was not a resident of the district in which the action was pending, but petitioner contended that he was "found" there and had agents there because he was a member of a conspiracy whose other members were residing and carrying on their illegal business there. The District Court found that venue was improper and ordered the action as to the Georgia commissioner severed and transferred to the Northern District of Georgia—also within the Fifth Circuit. A petition for a writ of mandamus was denied by the Court of Appeals, 199 F. 2d 593, and the Supreme Court's grant of certiorari was limited to the single question "Is mandamus an appropriate remedy to vacate the order of severance and transfer as an unwarranted renunciation of jurisdiction which would compel needless duplicity of trials and appeals to enforce the right to a single trial against all defendants in a proper forum?" 345 U.S. 933.

Petitioner contended in the Supreme Court that since venue was properly laid in Florida the District Court lacked "power" or jurisdiction to transfer the case to Georgia. The Court's answer, in an opinion by Mr. Justice Clark, was that the District Court had jurisdiction of both the subject matter of the action and of the person of the Georgia commissioner; it was, therefore, necessary in the due course of the litigation for the Court to rule on the motion and in so doing to decide the underlying question of venue. The District Court's decision of the venue question—even if erroneous—did not oust its jurisdiction, for "jurisdiction need not run the gauntlet of reversible error." Even if it be assumed that erroneous transfer of the case would defeat the objective of trying related issues in a single action and would give rise to a myriad of legal and practical problems as well as inconvenience to both courts, those difficulties must have been contemplated by Congress when it provided that in the federal courts only final decisions were reviewable.

Mr. Justice Douglas concurred without opinion.

Mr. Justice Frankfurter, joined in dissent by Justices Jackson and Minton, wrote that the writ of certiorari should have been dismissed as improvidently granted. The dissenters seized upon the majority opinion's indication that petitioner's venue contention was frivolous to conclude that venue was improperly laid in Florida. And once it is clear that the Georgia commissioner was entitled to severance and transfer, all discussion of the limits of mandamus becomes "irrelevant and gratuitous." The dissenters' view of the decision was that the Court held only that mandamus will not issue to compel a District Court to entertain a frivolous claim. The dissenters observed, also, that the majority's discussion of mandamus will not help decision when

a party is dismissed from a litigation for reasons not as obviously compelling as here or when postponement of review would involve a protracted trial with concomitant heavy costs and great inconvenience.

The dissenters' argumentative reading of the opinion cannot obscure the fact that the Court refused to permit review of the transfer order even though its correctness depended upon correct resolution of the venue question—a pure question of law. It would seem that mandamus is at least equally unavailable to review the exercise of judicial discretion underlying orders made under section 1404 solely for the convenience of parties and witnesses and in the interest of justice.

Committee Report

COMMITTEE ON UNIFORM STATE LAWS, ACTING
JOINTLY WITH THE SPECIAL COMMITTEE ON
THE UNIFORM COMMERCIAL CODE OF THE NEW
YORK STATE BAR ASSOCIATION

REPORT ON THE PROPOSED UNIFORM COMMERCIAL CODE

INTRODUCTION

The above named Committees, acting jointly and commonly referred to as the "Joint Committee," made reports in January 1953 to The Association of the Bar of the City of New York and the New York State Bar Association. The reports, which were identical except in formal and procedural respects, consisted of more than forty printed pages of text, appendix and bibliography. Since the Joint Committee adheres to its views and recommendations as set forth in those reports, it now confines itself to the present status of the Code in the State of New York, its legislative history in other states in 1953 and the changes which have been approved by its sponsors since the publication of the official Text and Comments in 1952.

STATUS IN NEW YORK

In the January 1953 reports the Joint Committee recommended a publicly sponsored and financed study of the Code, looking to an informed decision as to whether or not the Code should be enacted, in whole or in part, either in its present form or with revisions or amendments, or merely used in part as a basis for revision of and additions to existing statutes. A resolution to this effect was unanimously passed at a stated meeting of The Association of the Bar of the City of New York on January 20, 1953. The President of the New York State Bar Association, by authority of its Executive Committee, had already made recommendations to Governor Dewey for a publicly financed study of the Code. As a result of these and similar positions taken by other interested groups, the Code has been referred to the New York Law Revision Commission for study and report and the sum of \$50,000 has been made available to the Commission for the purpose. This sum is in addition to its normal substantial appropriations. The Joint Committee is informed that the Commission has retained expert technical assistance and that public hearings will be held in several cities of the State. In view of the complexity

of the matter and the variety of views known to be held by interested individuals and groups, it is expected that the Commission's final report will not be ready in time for action by the New York Legislature in 1954.

The Law Revision Commission has, from the beginning of its work on the Code, stressed its desire to secure help from all groups and individuals who have studied the Code, including the Joint Committee as a whole and its individual members and former members. The Joint Committee agrees that its members should cooperate fully with the Commission, but believes that this can best be done on an individual basis (or in an appropriate case as a representative of another group) except as to matters on which the Committee as a whole has taken a position, as in the Committee's formal reports. Any member testifying before the Commission or submitting data to it would seriously limit his usefulness if he were required to check each important statement with the Joint Committee, but nothing less could assure the member or the Commission that the member spoke for the full Committee.

LEGISLATIVE HISTORY IN OTHER STATES

The Code was enacted in Pennsylvania in 1953, effective July 1, 1954. It was amended soon after passage to incorporate certain late changes approved by the sponsors as hereinafter mentioned. The Code was also introduced in 1953 in the legislatures of California, Connecticut, Illinois, Indiana, Massachusetts, New Hampshire, Utah and Wisconsin, but was not enacted in any of those states. In California, Connecticut, New Hampshire, Massachusetts, Rhode Island and Wisconsin it was referred to legislative committees or to commissions for study. It is expected that the Code will be introduced and pressed for passage in a number of states in 1954.

CHANGES BY THE SPONSORS

Since the publication in 1952 of the official Text and Comments discussed by the Joint Committee in its 1953 reports, the sponsors of the Code have approved a number of changes. These, together with a list of errata and minor editorial changes, have been published by the American Law Institute in a pamphlet dated June 1, 1953. Only the changes of substance are discussed herein.

STOPPAGE IN TRANSITU

Subsection (1) of Section 2-705 was amended so as to restrict the right of stoppage *in transitu* to cases involving (i) insolvency of buyers or (ii) carload lots. This change was made as a result of representations by carriers that stoppage of less than carload lots is difficult, unnecessary for the protection of sellers and should be restricted to insolvency situations.

PRESENTMENT OF INSTRUMENTS PAYABLE AFTER SIGHT

Subsection (1)(b) of Section 3-503 was amended to read as follows:

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

BULK SALES

In Article 6 on bulk sales transactions, Section 6-103 was amended to exempt all transfers "made to give security for the performance of an obligation" from the requirement of giving notice to creditors and other requirements of that article. Formerly, that article required compliance with its provisions in the case of any security transfer which was not for "new value." With the amendment, all security transfers will be exempt. A similar amendment was made in Section 9-111 of Article 9. Sections 6-102, 6-105 and 6-107 were also amended to conform to the changes in Section 6-103.

*WAREHOUSE RECEIPTS, BILLS OF LADING
AND OTHER DOCUMENTS OF TITLE*

Sections 7-301, 7-302, 7-307, 7-309, 7-403, and 7-504 were amended to meet fears expressed by carriers that those Sections in the form found in the 1952 edition of the Code, when read in conjunction with Section 1-106, might change well established rules of damages. These amendments required amendments in Sections 7-203, 7-204 and 7-209 to avoid an implication that the difference in language was intended to change the rules respecting other bailees.

MUNICIPAL BONDS

A new Section, numbered 8-105, was inserted in Article 8, reading as follows:

Section 8-105. Securities Negotiable; Presumptions.

- (1) Securities governed by this Article are negotiable instruments.
- (2) In any action on a security the rules relating to proof of signatures, and to burden of proof after signatures are admitted or established, shall be the same as in actions on commercial paper (Section 3-307).

This Section is intended to meet fears by certain municipal bond counsel that such bonds would, under the Code as previously submitted, cease to be eligible investments under certain state laws since they might be held not to be negotiable instruments.

INSURANCE POLICIES AND THEIR PROCEEDS

Article 9 was also amended so as to make it clear that loans on insurance policies are not within its scope. This was accomplished by an amendment to Section 9-104, and an amendment to the Comment to Section 9-105.

REPLEDGE OF SECURITIES

Subsection (2)(e) of Section 9-207 was amended to make it clear that a broker carrying a customer's securities on margin has the right to repledge his customer's securities in a separate loan for the amount the customer owes on the securities. His right is limited to pledging the securities "upon terms which do not impair the debtor's right to redeem it."

PRIORITY AS BETWEEN SURETIES ON PERFORMANCE BONDS AND ASSIGNEES OF CONTRACTORS' ACCOUNTS RECEIVABLES

Section 9-312 of the 1952 Text of the Code provided that conflicting security interests to the same collateral should rank in the order of time of perfection, with certain exceptions, one of which was set forth in subsection (7) reading as follows:

(7) A security interest which secures an obligation to reimburse a surety or other person secondarily obligated to complete performance is subordinate to a later security interest given to a secured party who makes a new advance, incurs a new obligation, releases a perfected security interest or gives other new value to enable the debtor to perform the obligation for which the earlier secured party is liable.

Subsection (7) was vigorously objected to by the Association of Casualty and Surety Companies on the grounds that the subsection would reverse existing case law and substitute a rigid rule in a field where the parties should have bargaining power. For the reasons (1) that the Editorial Board was convinced of the merits of the position taken by that Association, and (2) that the retention of subsection (7) would probably provoke controversy in every legislature in which the Code was introduced, the Editorial Board reversed the policy-decision embodied in the original inclusion of that subsection. Accordingly, the subsection was eliminated.

The problem of priorities as between sureties and lenders has recently been important in financing United States Government contracts. Compare *Coconut Grove Exchange Bank v. New Amsterdam Casualty Co.* (149 F. 2d 73), conferring priority on the lender, with *Royal Indemnity Co. v. United States* (93 F. Supp. 891), conferring it upon the surety. The elimination of subsection (7) would seem to improve the position of the surety in the absence of an agreement as to priorities.

PRIORITY AS BETWEEN SUCCESSIVE LENDERS

The Comment to Section 9-312 was also amended to clarify the fact that the first lender to file a financing statement is entitled to prevail over a lender subsequently filing a financing statement, even though the actual advances by the first lender are subsequent in time to those of the second lender.

Respectfully submitted,

COMMITTEE ON UNIFORM STATE LAWS,
ACTING JOINTLY WITH THE SPECIAL
COMMITTEE ON THE UNIFORM COM-
MERCIAL CODE OF THE NEW YORK
STATE BAR ASSOCIATION

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TREATY MAKING POWER OF THE UNITED STATES A BIBLIOGRAPHICAL GUIDE

"The transaction of business with foreign nations is executive altogether."

THOMAS JEFFERSON

On February 7, 1952 Senate Joint Resolution #130 (The Bricker Resolution) was originally sponsored by 59 Senators to stimulate full discussion of the treaty making power of the government.

On January 7, 1953 Senate Joint Resolution #1 was introduced through Senator Bricker, by proponents interested in curtailing the powers of the Executive with respect to the treaty making power.

Hearings on the amendment were held and Senate Report #412, 83rd Congress, First Session was printed. On page 2 of the majority report there appears this statement, "As a result of these hearings, the study of the Peace and Law Committee of the American Bar Association and other studies, it may fairly be said that the issue of amending the treaty power has been exhaustively considered."

With due respect for the statement referred to above it was found upon seeking material for study that no comprehensive guide to literature on the subject of the treaty making power of the United States was available.

Recognizing that the Bricker Amendment involves fundamental Constitutional changes and would have great effect upon international and domestic problems, the Librarians of this Association upon publication of the Report of the Senate Judiciary Committee undertook to ascertain and catalog the material which it appeared would be needed for any scholarly and

searching examination of the problems involved by the proposed resolution.

In the hope that a full presentation of the problems which would be created by the proposed Constitutional change will be demanded by adherents to both sides of the question, the following check list of 500 references for study on the treaty making powers of the United States have been compiled.

It is submitted that adequate study may be made by members of Congress, opponents and proponents of the Constitutional proposal, that the voters may come to a decision of their own, as to whether it is advisable again to amend the Constitution of the United States.

- Abbott, Lyman. The power of the government to make a general arbitration treaty. Lake Mohonk, 1905.
- Adams, John Quincy. Memoirs. Charles Francis Adams, ed. 12 vols. Phila., 1874-1877.
- Alger, George. The states and national treaties. 1909. 66 Independent. 890-893.
- Allen, Florence E. The treaty as an instrument of legislation. New York, Macmillan. 1952. 114 p.
- Allen, Francis W. The legislative effect of a treaty. 1929. 13 Bi-Mo. L. Rev. 41-64.
- Amendment of Constitution relating to treaties and executive agreements. 1953. 99 Cong. Rec. 160.
- American Bar Association. Section of International and Comparative Law. Report. August, 1953.
- American Bar Association. Standing Committee on Peace and Law Through United Nations. Annual Reports, 1950-51.
- American Bar Association. Standing Committee on Peace and Law Through United Nations. Reports. Sept. 1950; Feb. 1950; Sept. 1952.
- American Bar Association. Standing Committee on Peace and Law Through United Nations. Report. 1952. 32 p.
- American Jewish Congress. An analysis of the Bricker am'd't. N.Y. 1953. 10 p.
- America's treaty-making power as defined by the Constitution. 1942. 21 Cong. Digest. 230.
- Anderson, Chandler P. The extent and limitations of the treaty-making power under the Constitution. July, 1907. Am. J. Int. L.
- Anderson, Chandler P. The extent and limitation of the treaty-making power under the Constitution. New York, Baker, Voorhis & Co., 1907.
- Anderson, Chandler P. The Senate and obligatory arbitration treaties. 1932. 26 Am. J. Int. L. 328-33.

- Anderson, Chandler P. Treaties as domestic law. 1935. 29 *Am. J. Int. L.* 472-6.
- Andrews, B. Amending the Constitution to provide for participation in a world government. 1950. 14 *Albany L. Rev.* 125-48.
- Annals of the American Academy of Political and Social Sciences. Congress and foreign relations. Sept. 1953.
- Arreglado, J. M. The need for a more flexible constitutional arrangement for treaty-making. 1953. 4 *Law Rev.* 101-6. Univ. of Santo Tomas.
- Association of the Bar of the City of New York. Report by the Committee on Federal Legislation and the Committee on International Law. Our Constitution and the Bricker proposals. Dec. 1953. 8 *The Record.* 454-85.
- Association of the Bar of the City of New York. Committee report on S. J. Res. 1, 83rd Cong., 1st Session. 1953. 8 *The Record.* 167-202.
- Association of the Bar of the City of New York. Committee report on S. J. Res. 130, 82nd Cong., 2nd Session. 1952. 46 p.
- Aufricht, H. Supersession of treaties in international law. 1952. 37 *Cornell L. Q.* 655-700.
- Bacon, Augustus O. The treaty-making power of the President and the Senate. 1906. 182 *N. Am. Rev.* 502-12.
- Baker, Newton D. Some constitutional problems. 1925. 11 *A.B.A. Jour.* 539.
- Barrett, James T. International agreements without the advice and consent of the Senate. 1905. 15 *Yale L. J.* 18-27.
- Bascom, John. Growth of nationality in the United States; a social study. New York & London, G. P. Putnam's Sons, 1899. 213 p.
- Bates, Lindell T. Les traités fédéraux et la législation des états aux Etats-Unis. Paris, Librairie Générale de Droit & de Jurisprudence. 1915. 228 p.
- Battling for Bricker resolution. Arguments of groups for and against the resolution submitted by Senator John W. Bricker. 1953. 11 *Cong. Rept.* 885-9.
- Bellot, H. H. L. Treaty making power in the United States and the growth of the executive. 1909. 127 *Law Times.* 384-6.
- Bemis, Samuel Flagg. *American Secretaries of State and their diplomacy.* 10 vols. New York, 1927-29.
- Bemis, Samuel Flagg. *A diplomatic history of the United States.* New York, Henry Holt & Co., 1936.
- Bemis, Samuel Flagg. *Jay's treaty: a study in commerce and diplomacy.* New York, Macmillan Co., 1923.
- Benton, Thomas Hart. *Debates of Congress*, vol. 1 New York, D. Appleton & Co., 1857.
- Berdahl, Clarence A. *War powers of the executive in the United States.* Urbana, 1921.
- Bielitsky, Frank. The danger in the treaty making power—a mirage. 1952. 25 *Temple L. Q.* 463-71.
- Binse, H. L. Present discontents; constitutional formula making the Secretary of State directly responsible to legislative body charged with ratifying treaties. 1945. 41 *Commonweal.* 317.

- Bird, C. B. Right of states to pass local laws in conflict with foreign powers. 1917. 24 Case and Comment. 200-96.
- Bishop, J. B. Theodore Roosevelt and his times. New York, Scribner's, 1920. 2 v.
- Bishop, William W., Jr. Cases and materials on international law. New York, Prentice Hall. 1952.
- Bishop, William W., Jr. The structure of federal power over foreign affairs. 1952. Minn. L. Rev. 299-322.
- Black, Forrest R. Missouri v Holland—a judicial milepost on the road to absolutism. 1931. 25 Ill. L. Rev. 911-28.
- Black, Forrest R. The role of the President and the Senate in the treaty making power. 1926. 11 St. Louis L. Rev. 203.
- Black, Forrest R. The United States Senate and the treaty power. 1931. 4 Rocky Mt. L. Rev. 1-19.
- Black, Forrest R. United States treaty power and limited government. 1925. 11 St. Louis L. Rev. 6-17.
- Black, Henry Campbell. Handbook of American Constitutional law. 2nd ed. St. Paul, West Pub., Co., 1897.
- Blaine, James G. Twenty years of Congress. Norwich, The Henry Hill Pub. Co., 1886.
- Borchard, Edwin M. Constitutional amendment on treaty-making. 1945. 39 Am. J. Int. L. 537-41.
- Borchard, Edwin M. Executive agreements and treaties. Shall the executive agreement replace the treaty? 1944. 38 Am. J. Int. L. 637-43.
- Borchard, Edwin M. The proposed constitutional amendment on treaty making. 1945. 30 Am. J. Int. L. 537.
- Borchard, Edwin M. Reply to M. S. McDougal and A. Lans—treaties and Congressional-executive or Presidential agreements. 1945. 54 Yale L. J. 616-64.
- Borchard, Edwin M. Shall the executive agreement replace the treaty? 1944. 53 Yale L. J. 664.
- Borchard, Edwin M. Treaties and executive agreements. 1946. 40 Am. Pol. Sci. Rev. 729-39.
- Borchard, Edwin M. Two thirds rule as to treaties—a change opposed. 1945. 68 N.Y.S.B.A. 201-15.
- Boyd, James H. Limitations of the treaty making power of the President of the United States with the concurrent power of the Senate. 1918. 86 Central L. J. 172-76.
- Boyd, Julian P. The expanding treaty power. 1928. 6 N.C.L. Rev. 428-56.
- Boyd, Willard L., Jr. Treaties governing the succession to real property by aliens. 1953. 51 Mich. L. Rev. 1001-20.
- Brandon, Michael. Analysis of the terms "treaty" and "international agreement." 1953. 47 Am. J. Int. L. 49-69.
- Brewer, F. M. The treaty power. Editorial Research Report. Jan., 1943. 39-54.

- Bricker, John W. America's greatest danger: domestic legislation by treaty. 1952. 98 Cong. Rec., 5305-14.
- Bricker, John W. Bringing the Constitution up-to-date. 1953. Ohio Bar. 409-19.
- Bricker, John W. Government's role. June, 1953. *Bests Ins. N.* (Life ed.) 18-20.
- Bricker, John W. Safeguarding the treaty power. 1952. 13 Fed. B. J. 77-84.
- The Bricker amendment. S. J. Res. 1, proposing to limit the President's power to make treaties and executive agreements: pro and con views. Apr. 18, 1953. *Information Service*. 1-4.
- The Bricker resolution: three views, the sponsor, the administration, the opposition. May, 1953. *Freedom and union*, 14-19.
- Bronaugh, Minor. Treaties versus the Constitution and Congress. 1923. 27 *Law Notes*. 168.
- Burke, D. B. Executive agreements and the treaty power. 1942. 42 *Colum. L. Rev.* 831-43.
- Burr, Charles H. The treaty making power of the United States and the methods of its enforcement as affecting the police powers of the states. Phila., The Amer. Philo. Society, 1912. 153 p.
- Butler, Charles Henry. Limitations on the treaty making power of the United States in matters coming within the jurisdiction of the states. 1929. *Proc. of the Am. Soc. of Int. L.* 176.
- Butler, Charles Henry. The treaty making power of the United States. New York, The Banks Law Pub. Co., 1902. 2 v.
- Cadwalader, John L. Notes on treaties and conventions between the United States and foreign powers. Wash, D.C., 1876.
- Calhoun, John C. Works. Edited by Richard K. Cralle. New York, D. Appleton & Co., 1888.
- Calhoun, John C. A discourse on the Constitution and government of the United States. New York, D. Appleton & Co., 1888.
- Canfield, A. F. Government by treaty. Address. 1952. 19 J.B.A.D.C. 239-47.
- Cannon, Clarence. Cannon's precedents of the House of Representatives. vol. VI. Wash., D.C., G.P.O., 1935.
- Castel, J. G. International law: effect of war in bilateral treaties; comparative studies. 1953. 51 *Mich. L. Rev.* 566-82.
- Catudal, H. M. Executive agreement or treaty? 1948. 10 *J. Pol.* 168-78.
- Catudal, H. M. Executive agreements; a supplement to the treaty-making procedure. 1942. 10 *Geo. Wash. L. Rev.* 653-69.
- Chafee, Zechariah, Jr. Amending the Constitution to cripple treaties. 1952. 12 *La. L. Rev.* 345-82.
- Chafee, Zechariah, Jr. Federal and state powers under U.N. covenant on human rights. 1951. *Wisc. L. Rev.* 389.
- Chafee, Zechariah, Jr. Stop being terrified of treaties. 1952. 38 *Am. B.A.J.* 731-4.
- Chafee, Zechariah, Jr. Treaty making power. 1952. *Harvard L. School Rec.* Nos. 1-6.

- Chamber of Commerce of the United States of America. Legislative Dept. Treaty law vs. the Constitution; the threat—the remedy. Wash., D.C., 1953. 33 p.
- Chamberlain, Joseph P. Legislative processes, national and state. New York, D. Appleton-Century Co., 1936.
- Chamberlain, Lawrence H. The President, Congress and legislation. New York, Colum. Univ. Press, 1946.
- Chambrun, Charles Adolphe de Pineton, marquis de. The executive power in the United States: a study of the constitutional law. Lancaster, Pa., Inquirer Print. & Pub. Co., 1874. 288 p.
- Chavez, D. Advice and consent of the Senate in the making of treaties. 1944. N.M. S.B. 81-5.
- Clancy, Charles Sumner. An organic conception of the treaty making power vs. state rights as applicable to the United States. 1908. 7 Mich. L. Rev. 19-52.
- Claudy, Donald E. The treaty power and human rights. 1951. 36 Cornell L. Q. 699-739.
- Clayton, J. C. A new view of the deportation cases in the Supreme Court. Is Congress empowered to abrogate a treaty? 1893. 16 N.J. L. Jour. 292-299.
- Cockes, William Archer. The supremacy of a treaty and the sovereignty of a state. 1878. 7 Central L. J. 423-6.
- Coleman, William C. The treaty power and its relation to state laws. 1909. 43 Am. L. Rev. 641-666.
- Cohen, Benjamin V. Some comments on the Bricker amendment. 1953. 48 Northwestern Univ. L. Rev. 185-196.
- Commager, Henry Steele. The perilous folly of Senator Bricker. 1953. 9 Reporter. 12-17.
- Congress and the ratification of treaties. 1945. 411 Int. Concil. 363-78.
- Congressional Digest for April, 1945 is devoted to the question—Should the constitutional treaty process be preserved?
- Congressional Digest for November, 1952 is devoted to the proposed congressional amendment to restrict the use of the treaty power.
- Conway, Edward A. Strait-jacketing the treaty power. 1953. 88 America. 647-9.
- Cooley, Thomas M. Constitutional limitations. 7th ed. Boston, Little, Brown & Co., 1903.
- Cooley, Thomas M. The general principles of constitutional law in the United States of America. Boston, Little, Brown & Co., 1931. 478 p.
- Cooper, J. C., Jr. Pan American convention on commercial aviation and the treaty making power. 1933. 19 A.B.A. Jour. 22-6.
- Corbett, P.E. Congress and proposals for international government. 1950. 4 Int. Organ. 383-99.
- Corwin, Edward S. The constitution and world organization. Princeton, Princeton Univ. Press. 1944. 64 p.

- Corwin, Edward S. National supremacy; treaty power vs. state power. N.Y. 1913.
- Corwin, Edward S. The President's control of foreign relations. Princeton, 1917.
- Corwin, Edward S. The President: office and powers. New York, N.Y.U. Press. 1941. 476 p.
- Corwin, Edward S. The President's treaty making power. 1953. 19 Think. 5-7, 30.
- Corwin, Edward S. The spending power of Congress. 1925. 36 Harvard L. Rev. 548.
- Cowles, Willard B. Treaties and constitutional law. Wash., D.C., Amer. Council on Public Affairs. 1941. 315 p.
- Crandell, S. B. Treaties, their making and enforcement. 2nd ed. Wash., D.C., J. Byrne & Co., 1916. 663. p.
- Crosskey, William Winslow. Politics and the Constitution in the history of the United States. Chicago, Univ. of Chicago Press, 1953.
- Croswell, Simon Greenleaf. The treaty making power under the Constitution. 1886. 20 Am. L. Rev. 513-27.
- Currey, John. State vs treaty rights. 1913. 6 Lawyer and Banker. 6-16.
- Danger in treaty making powers—a mirage. 1952. 25 Temp. L. Q. 463-71.
- Dangerfield, Royden J. In defense of the Senate. Norman, Okla., Univ. of Okla. Press. 1933. 365 p.
- Davis, J. C. B. Notes upon the foreign treaties of the United States. Wash., D.C., 1880.
- Davis, John W. The treaty making power in the United States. Address. London, New York, H. Milford, Oxford Univ. Press. 1920. 18 p.
- Dean, Arthur H. The Bricker amendment and authority over foreign affairs. 1953. 32 Foreign Affairs. 1-19.
- Dennison, Eleanor E. The senate foreign relations committee. Stanford Univ. Press, 1942. 201 p.
- Deutsch, E. P. Legislation by treaty. 1952. 31 Mich. S. B. J. 19-25.
- Deutsch, E. P. Need for a treaty amendment: restatement and a reply. 1952. 38 Amer. B.A.J. 735-8, 793-6.
- Deutsch, E. P. Proposed changes in U.S. treaty making power. 1953. 1 La. B. J. 3-11.
- Deutsch, E. P. The treaty making clause. 1951. 37 Am. B.A.J. 659-62.
- Devlin, Robert Thomas. The treaty power under the Constitution of the United States. San Francisco, Bancroft-Whitney Co., 1908. 864 p.
- Dewhurst, William Whitwell. Is the President the sole negotiator of treaties? Wash., G.O.P., 1921. 11 p.
- Dickey, J. S. Our treaty procedure versus our foreign policies. 1945. 25 Foreign Affairs, 357-77.
- Dickinson, Edwin D. Are the liquor treaties self executing? 1926. 20 Am. J. Int. L. 444.
- Dickinson, Edwin D. The law of nations as part of the national law of the United States. 1952. 101 Univ. of Pa. L. Rev. 792-833.

- Displacement of state laws by treaties. 1914. 14 *Colum. L. Rev.* 667-9.
- Diplomatic correspondence. Vol. 1. Wash., D.C., G.P.O. 1867.
- Dobie, Edith. Attitude of the United States Senate upon general arbitration treaties. 1928. 8 *S.W. Pol. & Soc. Sci. Q.* 413.
- Dodd, W. F. International relations and the treaty power. 1944. 30 *A.B.A.J.* 360-2.
- Duer, William. Outline of the constitutional jurisprudence of the United States. New York, Collins & Hannay. 1833.
- Dulles, John Foster. The making of treaties and executive agreements. 1953. 28 *State Dept. Bull.* 591-5.
- Dulles, John Foster. Speech before the American Bar Association convention. 1953. *N.Y. Times*. Aug. 27th. p. 4.
- Duwalt, G. W. The treaties of the United States and alien land laws of Illinois and other states of the Union. 1896. 43 *Central L. J.* 211-22.
- Eagleton, Clyde. International government. Rev. Ed. New York, The Ronald Press. 1948.
- Eagleton, Clyde. Problems on international legislation. 1934. 8 *Temp. L. Q.* 218, 376, 505.
- Eagleton, Clyde. Signature, ratification and accession of treaties. 1934. 8 *Temp. L. Q.* 376.
- Edwards, R. A. Constitution, the treaty power, and juridical isolationism. 1953. 14 *Pitts. L. Rev.* 199-233.
- Effect of objections to treaty reservations. 1951. 60 *Yale L. J.* 728-35.
- Eisenhower, Dwight D. Amendment relating to treaty making power. 1953. *State Dept. Bull.* 192-194.
- Eliot, Edward C. The treaty making power with reference to the reserved power of the states. 1913. 20 *Case and Comment.* 77-83.
- Elliot, Jonathan. The American diplomatic code. Wash., D.C., 1834.
- Elliot, Jonathan. The debates in the several state conventions on the adoption of the federal Constitution. Phila., J. B. Lippincott Co., 1896.
- Elliott, Charles B. The treaty making power. 1899. 27 *Forum.* 592-604.
- Executive agreements and the proposed constitutional amendments to treaty power. 1953. 51 *Mich. L. Rev.* 1202-6.
- Fairman, Charles. *Finis to Fujii*. 1952. *Am. J. Int. L.* 682-90.
- Farrand, Max. The records of the federal convention of 1787. New Haven, Yale Univ. Press. 1937.
- Federal treaty power and the reserved powers of the states. 1953. 21 *Kan. B.A.J.* 277-81.
- The Federalist: a collection of essays, written in favor of the new Constitution. Alexander Hamilton, James Madison, John Jay. Nos. 33, 35, 58, 64, 75. New York, Tudor Publishing Co., 1937. Or any edition.
- Feidler, E. R. and R. H. Dwan. Extent of the treaty making power. 1939. 28 *Ga. L. J.* 184-97.
- Fensterwald, B., Jr. Trojan horse or Don Quixote's windmill. 1952. 13 *Fed. B. J.* 85-98.

- Fenwick, Charles G. *International law*. New York, Appleton-Century-Crofts. 1948. 744 p.
- Fenwick, Charles G. Proposed limitations upon executive agreements. 1953. 47 *Amer. J. Int. L.* 284-7.
- Fenwick, Charles G. Reservations to multilateral treaties. 1951. 45 *Amer. J. Int. L.* 145-8.
- Fenwick, Charles G. When is a treaty not a treaty? 1952. 46 *Amer. J. Int. L.* 296-8.
- Finch, G. A. Treaty-clause amendment: the case for the association. 1952. 28 *Amer. B.A.J.* 467-70, 527-30.
- Fish, Carl Russell. *American diplomacy*. 3rd ed. New York, 1919.
- Fitzpatrick, William H. Government by treaties. Address. 1952. 6 *Ark. L. Rev.* 315-25.
- Fleming, D. F. Role of the Senate in treaty making: a survey of four decades. 1934. 28 *Amer. Pol. Sci. Rev.* 583-98.
- Fleming, D. F. *The treaty veto of the American Senate*. New York, Putnam. 1930. 325 p.
- Fleming, D. F. *United States and the League of Nations*. New York, 1932.
- Fleming, W. H. *Treaty making power of the President and Senate*. 1909. *Ga. B. Assn.* 183-207.
- Flood, E. C. Treaties and state laws. 1917. 10 *Lawyer and Banker*. 181-196.
- Fort, John Franklin. Treaty power under the Constitution of the United States. 1912. 35 *N.J. L. J.* 68-76.
- Fortuna, C. P. The treaty-making power: senate joint resolution. 1953. 33 *B. U. L. Rev.* 486-93.
- Foster, John W. *Diplomatic volumes*. 2 v. New York, 1909.
- Foster, John W. *The practice of diplomacy*. New York, 1906.
- Foster, John W. *The treaty making power under the Constitution*. 1901. 11 *Yale L. J.* 69.
- Fraser, Henry S. Constitutional scope of treaties and executive agreements. 1945. 31 *A.B.A.J.* 286-9.
- Fraser, Henry S. Treaties and executive agreements. 1945. 68 *N.Y.S.B.A.* 175-84.
- Freeman, H. A. *International administrative law: a functional approach to peace*. 1948. 57 *Yale L. J.* 976-93.
- Freymond, Pierre. *La ratification des traités et la probleme des rapports entre le droit international et la droit interne*. Lausanne, Imprimerie La Concorde. 1947. 175 p.
- Fulbright, J. W. and others. Should treaties be ratified by a majority of both houses? Town Meeting, Oct. 19, 1944. p. 1-22.
- Gallatin, Albert. Written by John Austin Stevens. Boston, Houghton Mifflin & Co., 1888.
- Gallatin, Albert. *Writings*. Edited by Henry Adams. Phila., J. P. Lippincott & Co., 1879.
- Galloway, George R. *Congress at the crossroads*. New York, Thomas Y. Crowell Co., 1946.

- Garner, James W. Acts and joint resolutions of Congress as substitutions for treaties. 1935. 29 Am. J. Int. L. 482.
- Garner, James W. American foreign policies. New York, 1928.
- Garner, James W. Senate reservations to the inter-American general treaty of arbitration. 1932. 26 Am. J. Int. L. 333-6.
- Garrett, Garet. Nullification by treaty. 1953. 3 Freeman. 549-50.
- General Electric Co., v. Robertson, 21 F 2nd 214. Scope of treaty making power, when treaties are self-executing. 1928. 26 Mich. L. Rev. 316-21.
- Genocide—a commentary on the convention. 1949. 58 Yale L. J. 1142-60.
- Gordon, W. C. Self-executing treaties—genocide convention. 1950. 48 Mich. L. Rev. 852-60.
- Graham, M. W. Draft treaties of peace. 1946. 40 Am. J. Int. L. 781-4.
- Green Bag Editorial. The treaty power and "state rights." 1913. 25 Green Bag. 451-4.
- Green, James Frederick. The President's control of foreign policy. New York, Foreign Policy Assn. 1939. 11 p.
- Gregory, Charles Noble. Federal treaties and state laws. 1907. 6 Mich. L. Rev. 25-43.
- Gulick, Mary S. Legal effect of an act of Congress upon a prior treaty. 1933. 2 Geo. Wash. L. Rev. 74.
- Hackworth, G. H. Digest of international law. Washington, G.P.O. 1940-44.
- Hackworth, G. H. Treaties and executive agreements defined. 1943. 22 Cong. Digest. 233-4.
- Hadley, Edwin W. The treaty making power: an Achilles heel. 1951. N. L. Rev. 49-52.
- Hall, Connor. The treaty power. 1924. 30 W. Va. L. Q. 104.
- Hall, J. P. State interference with the enforcement of treaties. 1917. 7 Acad. of Pol. Sci. Proceedings. 548-557.
- Hamilton, Alexander. Works. Edited by Henry Cabot Lodge. New York, G. P. Putnam's Sons. 1885-86.
- Handler, Bidney. Limitations on the treaty making power of the United States. 1930. 2 N.Y.S.B.A. Bull. 502-9.
- Harley, J. E. The obligation to ratify treaties. 1919. 13 Amer. J. Int. L. 389.
- Harley, J. E. A reexamination of the treaty power and the Constitution. 1952. 23 World Affairs Interpreter. 275-93.
- Harris, L. Treaties under the Constitution and international law. 1950. 54 Dick. L. Rev. 417-31.
- Harrison, Benjamin. This country of ours. New York, Charles Scribner's Sons. 1897.
- Hatch, Vermont. The treaty making power: "An extraordinary power liable to abuse" 1953. 39 A.B.A.J. 808.
- Hatch, Vermont. The treaty power and the case for constitutional amendment. 1953. 42 Maine State Bar Assn. p. 52.
- Hayden, Joseph Ralston. The Senate and treaties, 1789-1817. New York, The Macmillan Co., 1920. 237 p.

- Hayden, R. States rights doctrine and the treaty making power. 1917. 32 *Amer. Hist. Rev.* 566-85.
- Hayden, S. S. Shall the Senate modify its treaty making power? 1943. *For. Pol. Bull.* 2-3.
- Haynes, George H. *The Senate of the United States*. Boston, Houghton. 1938.
- Hazlitt, Henry. *A new Constitution now*. New York, Whittlesey House. 1942. 297 p.
- Heicher, Winchester H. and Clyde Eagleton. Revision and termination of treaties. 1934. 8 *Temp. L. Q.* 505.
- Heindel, R. H. Atlantic treaty in United States. 1949. 43 *Amer. J. Int. L.* 633-65.
- Helman, F. E. Treaty law and the Constitution. 1953. 24 *Okla. B.A.J.* 1333-48.
- Henry, Leslie. When is a treaty self-executing? 1929. 27 *Mich. L. Rev.* 776-85.
- Hershey, Amos S. *Essential of international public law*. New York, Macmillan. 1912.
- Hershey, Amos S. The treaty making power with special references to the United States. 1926. 1 *Ind. L. J.* 261-9.
- Hill, H. C. *Roosevelt and the Caribbean*. Chicago, 1927.
- Hinds, Ascher C. *Hinds' precedents of the House of Representatives*, vol. 2. Wash., G.P.O., 1907.
- Hoar, George. *Autobiography of seventy years*. 2 v. New York, 1903.
- Holman, F. E. American rights vs "treaty law": case for the adoption of the Bricker amendment. 1953. 3 *Freeman*. 803-5.
- Holman, F. E. An "International Bill of Rights": Proposals have dangerous implications for U.S. 1948. 34 *A.B.A. J.* 984-6, 1078-81.
- Holman, F. E. Treaty law-making. Address. 1950. 36 *A.B.A. J.* 707-10.
- Holman, F. E. Treaty law—a threat to American rights. 1952. *J.B.A. Kan.* 253-63.
- Holman, F. E. Is the UN's Bill of Human Rights dangerous? 1949. 35 *A.B.A.J.* 288-90, 360-3.
- Holman, F. E. Treaty law and the Constitution. 1953. *Okla. Bar. A.J.* 1333-48.
- Holst, H. von. *The constitutional law of the United States of America*. Chicago, Callaghan & Co., 1867.
- Holt, W. Stull. *Treaties defeated by the Senate; a study of the struggle between President and Senate over the conduct of foreign relations*. Baltimore, The Johns Hopkins Press. 1933. 328 p.
- Horwill, Herbert W. *The usages of the American Constitution*. Oxford Univ. Press. 1925.
- Howland, Charles P. *American foreign relations*. New Haven, 1931.
- Hudson, Manley O. Charter provisions on Human Rights in American Law. 1950. 44 *Am. J. Int. L.* 543.

- Hudson, Manley O. The membership of the United States in the international labor organization. 1934. 28 Am. J. Int. L. 669.
- Hudson, Manley O. Some problems under current discussion. Amer. Soc. of Int. L. Proceedings. 1952. 2-11.
- Hudson, Manley O. The treaty making power of the United States in connection with manufacture of arms and ammunition. 1934. 28 Am. J. Int. L. 736-9.
- Hughes, Charles Evans. The pathway of peace. New York, 1925.
- Hulen, Bertram D. Inside the Dept. of State. New York, Whittlesey House. 1939. 328 p.
- Hunt, Gaillard. The Dept. of State of the United States. New Haven, 1914.
- Hunt, Gaillard. The treaty making power. 1912. 94 Nation. 612.
- Hyde, Charles Cheney. Constitutional procedures for international agreement by the United States. 1937. 31 Proc. Am. Soc. Int. L. 45.
- Hyde, Charles Cheney. International law, chiefly as interpreted and applied by the United States. Boston, Little, Brown & Co., 1945.
- International agreements other than treaties—effect. 1953. 47 Amer. J. Int. L. 147.
- Jackson, J. L. The tenth amendment versus the treaty making power under the Constitution of the United States. 1928. 14 Va. L. Rev. 331-57. 441-69.
- Jackson, S. W. Treaty powers amendment unnecessary. 1953. 22 J.B.A. Kan. 74-77.
- Jefferson, Thomas. Writings, autobiography, correspondence, reports, etc. Wash., D.C., Taylor & Maury. 1853-54.
- Jefferson, Thomas. Manual of parliamentary practice. Phila., 1840. 110 p.
- Jefferson, Thomas. Writings. Edited by Paul Leicester Ford. Vols. VII, X. New York, G.P. Putnam's Sons. 1896.
- Jessup, Phillip Caryl. The conquering march of an idea; the universal declaration of human rights. 1949. 21 Dept. of State Bull. 432-5.
- Jessup, Phillip Caryl. A modern law of nations, an introduction. New York, Macmillan Co., 1948. 236 p.
- Johnson, H. J., Jr. Federal treaty power; a constitutional wolf in sheep's clothing? 1950. 11 Ala. L. 123-32.
- Johnson, W. F. American foreign relations. 2 v. New York, 1916.
- Johnston, Henry P. Correspondence and public papers of John Jay. 4 vols. New York, 1890-1893.
- Jones, J. M. Constitutional limitations on the treaty-making power. 1941. 35 Am. J. Int. L. 462-81.
- Judicial review and the growth of the treaty power. 1952. 3 Syracuse L. Rev. 315-22.
- Kearney, J. M. A proposed amendment to the Constitution; Senate Joint Resolution 130. 1953. 3 Catholic Univ. L. Rev. 43-50.
- Kellogg, Frank B. Effect of reservations and amendments to treaties. 1919. 13 Amer. J. Int. L. 767.
- Kellogg, Frank B. Treaty-making power. 1913. Amer. Bar Assn. 331-392.

- Kelly, C. B. The treaty power: its scope and limitations under the Constitution. 1951. 19 *George Wash. L. Rev.* 422-38.
- Kent, James. Commentaries on American law. 12th ed. vol. I. Little, Brown & Co., Boston, 1873.
- Kuhn, A. K. Supremacy of treaties over state laws in respect to the interstate estates of aliens. 1932. 26 *Amer. J. Int. L.* 348-51.
- Kuhn, A. K. The treaty-making power and the reserved sovereignty of the states. 1907. 7 *Columbia L. Rev.* 172-85.
- Langhin, J. L. and Willis, H. P. Reciprocity. New York, Baker & Taylor Co. 1903.
- Lashly, J. M. Should the treaty power be restricted? 1953. 39 *Women L. J.* 5-8, 23-25.
- Laski, Harold U. The American Presidency. N.Y. Harper. 1940.
- Lawrence, William. The treaty power under the Constitution of the United States. Washington, 1871-1875.
- Leake, Walter. The limitations upon the treaty-making power. 1915. 15 *Va. L. Register.* 72-75.
- Legal Committee acts on treaty reservations. 1950. 9 *U.N. Bull.* 477-8.
- Legislative history of the Senate Committee on foreign relations. 82nd Cong. 2nd. Sess. Sen. Doc. 161.
- Lenoir, James J. The conclusions derived from treaty cases decided by the United States Supreme Court. 1935. 7 *Miss. L. J.* 401-5.
- Lenoir, James J. Treaties and the Supreme Court. 1934. 1 *Univ. Chicago L. Rev.* 602-22.
- Lesser, S. T. International law: treaty provisions dealing with the status of prewar bilateral treaties. 1953. 51 *Mich. L. Rev.* 566-82.
- Levi, Werner. Law-making treaties. 1944. 28 *Minn. L. Rev.* 247-54.
- Levitan, David M. Executive agreements: a study of the executive in the control of the foreign relations of the United States. 1940. 35 *Ill. L. Rev.* 365.
- Library of Congress. List of references on the treaty-making power. Washington, Govt. Printing Office. 1920.
- Lodge, Henry Cabot. Selections from the correspondence of Theodore Roosevelt and Henry Cabot Lodge. 2 vols. New York. 1925.
- Lodge, Henry Cabot. The Senate and the League of Nations. New York. 1925.
- Luce, Robert. Legislative problems. Houghton Mifflin Co. Boston. 1935.
- Lyle, J. E. Power of treaties. Address. 1952. 15 *Tex. B. J.* 419-21.
- Lyman, Charles M. Bar Associations and the Bricker amendment. 1953. 27 *Conn. Bar Journal.* 393-406.
- McBain, H. L. The living Constitution. New York. 1927.
- McCall, Samuel W. The business of Congress. New York, Columbia Univ. Press. 1911.
- MacChesney, B. Treaty-making powers and problems. 1950. 39 *Ill. B. J.* 8-13.

- McClendon, R. Earl. The two-thirds rule in Senate actions upon treaties, 1789-1901. 1932. 26 *Amer. J. Int. L.* 37-56.
- McClure, Wallace. International executive agreements. New York, Columbia Univ. Press. 1941. 499 p.
- McCormick, J. Francis. Exclusive federal jurisdiction over aviation via international treaties. 1935. 6 *Air L. Rev.* 13.
- McDougal, Myres S. and Leighton, Gertrude C. K. Rights of man in the world community. 1949. 59 *Yale L. J.* 60-115.
- McDougal, Myres S. and Lans, A. Treaties and congressional-executive or presidential agreements; interchangeable instruments of national policy. 1945. 54 *Yale L. J.* 181-351, 534-615.
- McLaughlin, Andrew C. A constitutional history of the United States. New York, D. Appleton-Century Co. 1935. 833 p.
- MacLay, William. Sketches of debate in the First Senate. Harrisburg. 1880.
- MacMaster, Donald. United States Senate and treaty-making powers. 1920. 2 *J. Comp. Leg. and Int. L.* 189-95.
- McMaster, John Bach. History of the people of the United States. vol. II. New York, D. Appleton & Co. 1885.
- McNair, A. D. Effects of peace treaties upon private rights. 1941. 7 *Camb. L. J.* 379-98.
- Madison, James. The debates in the Federal Convention of 1787. Mobile, A. Mygatt. 1842. 3 vols.
- Madison, James. The journal of the debates in the convention. ed. by Gaillard Hunt. New York, G. P. Putnam's Sons. 1908.
- Madison, James. The papers of James Madison. Washington, Langtree & O'Sullivan. 1840.
- Madison, James. Writings, ed. Gaillard Hunt. vol. VI. New York, G. P. Putnam's Sons. 1906.
- Magnusson, J. Our membership in the United Nations and the federal treaty power under the Constitution. 1948. 34 *Va. L. Rev.* 137-64.
- Martin, Charles E. and George, William H. American government and citizenship. New York, Alfred A. Knopf. 1927.
- Mathews, John M. American foreign relations: conduct and policies. New York, Appleton-Century. 1938. 766 p.
- Mathews, John M. The joint resolution method. 1938. 32 *Amer. J. Int. L.* 349-52.
- Matthews, R. E. Bricker proposed constitutional amendment on treaty-making power discussed from both sides. 1953. 22 *Hennepin Lawyer.* 19-22.
- Merrill, M. H. Treaty law. What is bad about it? 1953. 24 *Okla. B.A.J.* 1465-70.
- Mikell, William E. The extent of the treaty-making power of the President and Senate of the United States. 1909. 57 *Univ. of Pa. L. Rev.* 435-58.
- Miller, David H. Treaties and other international acts of the United States of America. 1930. 24 *Amer. J. Int. L.* 241-63.

- Milton, George F. The use of presidential power. Boston, Little, Brown & Co. 1944. 349 p.
- Mitchell, N. P. State interests in American treaties. Richmond, Va., Garrett & Massie. 1936. 220 p.
- Mitchell, W. D. The Constitution and the treaty to prevent war. 1945. 31 A.B.A.J. 59-62.
- Moore, John Bassett. A digest of international law. Washington, Govt. Printing Office. 1906. 8 vols.
- Moore, John Bassett. History and digest of the international arbitrations to which the United States has been a party. Washington, Govt. Printing Office. 1898.
- Moore, John Bassett. International law and some current illusions. New York, 1924.
- Moore, John Bassett. Treaties and executive agreements. 1905. 20 Pol. Sci. Q. 385.
- Morey, William Carey. The treaty-making power and the legislative authority of the states. Rochester, The Genesee Press, 1909. 10 p.
- Morford, J. R. Constitutional amendment as to the ratification of treaties. 1944. 30 A.B.A.J. 605-7.
- Morley, Felix. State of the nation; power to make treaties. 1950. 38 Nations Bus. 17-18.
- Morley, Felix. Treaty law and the Constitution. 1953. American Enterprise Assn. (Nat. Econ. Problems Ser. no. 448) 52 p.
- Morris, Herman W. Powers of Congress over treaties. 1903. N. Y. State Bar Assn. 95-115.
- Morse, W. L. International justice through law. 1946. 26 Oreg. L. Rev. 7-38.
- Morton, T. H. International agreements and third states. 1953. 15 Ga. B. J. 417-34.
- Moskowitz, M. Is the U.N.'s bill of human rights dangerous? A reply to President Holman. 1949. 35 A.B.A.J. 238-8, 358-9.
- Mowat, Robert B. Diplomatic relations between Great Britain and the United States. New York. 1925.
- Mullen, J. M. Supreme law of the land. 1953. 39 Va. L. Rev. 729-52.
- Murdock, J. O. Constitutionality of a treaty or an executive agreement with the United Nations to establish the "world capital" in the United States. 1947. 15 Geo. Wash. L. Rev. 175-90.
- Murphy, Jay. Review of: Association of the Bar of the City of New York, Committee on Federal Legislation and Committee on International Law, Report on S. J. Res. 130. 1952. 5 Ala. L. Rev. 198-207.
- Myers, Denys P. Treaty and law under the Constitution. 1952. 26 Dept. of State Bull. 371-76.
- National supremacy; treaty power vs. state power. New York, H. Holt & Co. 1913. 321 p.
- Naujoks, H. H. Compacts and agreements between states and between states and a foreign power. 1953. 36 Marq. L. Rev. 219-47.

- Nevins, Allan. Henry White. New York, 1930.
- New York County Lawyers Association considers treaty amendment. 1952. N. Y. County Bar Bull. 91 p.
- New York State Bar Association. Committee on Amendments to the Federal Constitution. Report on proposed constitutional amendments relating to the making of treaties and their effect. June, 1952. 47 p.
- New York State Bar Association. Committee on International Law. Report on S. J. Res. 1, and discussion of resolution. Jan. 1953. 86 p.
- Nigro, Felix A. Senate confirmation and foreign policy. 1952. 14 J. Politics. 281-99.
- Nutting, C. B. The treaty power: a legislative footnote. 39 A.B.A.J. 920-21.
- Ober, F. B. The treaty-making and amending powers: do they protect our fundamental rights? 1950. 36 A.B.A.J. 715-19.
- Ogg, Frederic A. and Ray, P. Orman. Introduction to American government. 9th ed. and 10th ed. New York, Appleton-Century-Crofts, Inc. 1948 and 1951.
- Oliver, L. S. World government inevitable. 1950. 24 Temp. L. Q. 7-26.
- On amending the treaty power. 1953. N.J.L.J. 5-6, 6-8.
- Opinions of the Attorney General. vol. 6 1853-54.
- Our system could be made over by treaty. S.E.P. 1952. Kent B. Assoc. 10.
- Palmer, Norman D. and Perkins, Howard C. International relations. Wharton School of Finance and Commerce. Univ. of Pa. 1953.
- Patch, B. W. Treaties and domestic law. 1952. Editorial Research Reports. 241-56.
- Pearson, Theodore and Backus, Dana Converse. Save the peace power: don't strait-jacket treaties. 1953. 39 A.B.A.J. 804.
- Pepper, George W. In the Senate. Philadelphia, 1930.
- Pergler, Charles. Limitations of the treaty-making power. 1925. 98 Cent. L. J. 41.
- Perkins, James A. Congressional Investigations of Matters of International Import. 1940. 34 Am. Pol. Sci. Rev. 284-294 p.
- Perlman, P. B. On amending the treaty powers. 1952. 52 Columbia L. Rev. 825-68.
- Phillips, D. W. Senate must recover its lost powers in treaty making. 1951. 223 Sat. Eve. Post. 12.
- Phillips, O. L. Treaty-making power—a real and present danger. 1952. 29 Dicta. 397-405.
- Pierce, Franklin. Federal usurpation. New York, D. Appleton and Co. 1908. 437 p.
- Pomeroy, John Norton. An introduction to the constitutional law of the United States. 9th ed. Boston and New York, Houghton, Mifflin and Co., 1886. 709 p.
- Post, C. Gordon. Treaty versus statute. A note of Cook v. United States. No. 4. 1936. 16 S. W. Pol. & Soc. Sci. Qt. 65.

- Post, Russell L. Government spending for general welfare. 1935. 22 Virginia L. Rev. 1.
- Potter, D. R. Development of treaty procedure in the United States Senate. Address. 1936. 2 Fed. B.A.J. 325-30.
- Potter, P. B. Inhibitions upon the treaty-making power of the United States. 1934. 28 Am. Int. Law. 456-74.
- Powers of the states—treaty-making power. 1918. 27 Yale L. J. 406-407.
- President withdraws obsolete treaties from the Senate. 1949. 21 U.S. State Dept. Bul. 316.
- The President's control of foreign relations. Princeton, Princeton Univ. Press., 1917. 216 p.
- President's treaty-making power under fire. 1953. 11 Congressional Q. W. Rept. 502-4.
- Preuss, Lawrence. On amending the treaty-making power: A comparative study of the problem of self-executing treaties. 1953. 51 Mich. L. R. 1117-1142.
- Preuss, Lawrence. Treaties. Address. 1951. 45 Amer. Soc. Int. L., Proceedings. 82.
- Pringle, Henry J. Theodore Roosevelt. New York, 1931.
- The proposed constitutional amendment to restrict the use of the treaty power. 1952. 31 Congressional digest. 257-288.
- Proposed Constitutional Limitations on International Agreements. 38 Minn. L. Rev. 46-76.
- Putney, Albert H. The police power of the states as restricted by the federal constitution. 1913. 20 Case and Comment. 310-315.
- Putney, Bryant. Participation by Congress in Control of Foreign Policy. 1939. No. 18 Editorial Research Reports. 339-355.
- Queens County Bar Association. Committee on American Principles. Report concerning the proposals by the United States to amend the constitution of the United States relative to the power of making treaties and executive agreements. 1953.
- Rank, R. Modern war and the validity of treaties. 1953. 38 Cornell L.Q. 321-55.
- Rawle, William. A view of the Constitution of the United States of America. 2nd ed. Philadelphia, P. H. Nicklin, 1829. 349 p.
- Re, Edward D. Treaty-making power. 1954. 5 B'klyn Barrister. 106-112.
- Reiff, Henry. The enforcement of multipartite administrative treaties in the United States. 1940. 24 Am. J. Internat. L. 661-79.
- Report of the Committee on International Law and Relations on S.J. Res. 1. 1953. 13 Law. Guild Rev. 8-13.
- Research in International Law of the Harvard Law School. Law of Treaties: Draft Convention, with Comment. 1935. 29 Am. J. Int. L. Supp., No. 4. 652-1226.
- A review of the question, In whom has the constitution vested the treaty power? Philadelphia, Printed by Samuel Harrison Smith. 1796. 35 p.

- Rhyne, Charles. Statement for the U.S. Chamber of Commerce on the need for amendment of the treaty clause. 1953. 12 p.
- Richardson, J. D. A Compilation of the Messages and Papers of the Presidents, 1789-1902. Washington, D. C. 1905.
- Richberg, D. R. Bricker amendment and the treaty power. 1953. 39 Va. L. Rev. 753-764.
- Riley, Robert L. Treaties past and present. Missouri law review. 1952. 17 Missouri law review. 66-73.
- Rix, Carl B. Human Rights and International Law: Effect of the Covenant Under Our Constitution. 1949. 35 A. B. A. J. 551-4, 618-20.
- Rix, Carl B. Human rights and international law. 1949. Amer. Soc. Int. L., Proceedings. 46-58.
- Rix, Carl B. Treaty laws and the press. New York, 1953. 11 p.
- Robinson, Chalfonte. The treaty-making power of the House of Representatives. 1903. 12 Yale L. Rev. 191.
- Rogers, Lindsay. The American Senate. New York, Crofts, 1931. 285 p.
- Rogers, Lindsay. Senator Bricker finds a loophole. 1952. 7 Reporter. 31-33.
- Rohrlich, C. Self-release from treaties. 1932. 66 U. S. L. Rev. 18-24.
- Roosevelt, Theodore. An autobiography. New York, The Macmillan Co., 1913.
- Sandifer, Durward V. International protection of human rights: the United Nations system. 1949. Amer. Soc. Int. L., Proceedings. 59-65.
- Satterfield, John C., Sr. Constitutional amendment by treaty and executive agreement. 1953. 24 Miss. L. J. 280-294.
- Sayre, F. B. Constitutionality of the Trade Agreements Act. 1939. 39 Columbia L. Rev. 751-775.
- Schmidt, J. F. International Organization and the Senate. 1945. 19 Tenn. L. Rev. 29-39.
- Schurz, Carl. Speeches, Correspondence and Political Papers, ed. by Frederic Bancroft. 2 vols. New York, 1913.
- Scott, James B. Treaty-Making Under the Authority of the United States, Its Use and Abuse. Washington, D. C. 1934. 36 p.
- Segal, M. Constitutional law—the United Nations Charter and the treaty power . . . 1953. 26 So. Calif. L. Rev. 175-186.
- Self-execution of treaties under the United States Constitution. 1926. 26 Col. L. Rev. 859-70. 1926. 25 Mich. L. Rev. 78-9.
- Senate resolutions proposing restrictions on treaty-making powers. 1952. 26 Dept. State Bull. 952-61.
- Separation of powers—current proposals to limit international compacts by United States Government. 1953. 29 N.D.L. Rev. 170-79.
- Sergeant, Thomas. Constitutional law. Philadelphia, A. Small, 1822.
- Should the Constitution be amended to limit the treaty-making power?—a symposium. E. P. Deutsch, G. A. Finch, J. L. Call, H. C. Dillard, Q. Wright. 1953. 26 So. Calif. L. Rev. 347-395.
- Should the constitutional treaty power be preserved? 1945. 24 Cong. Digest. 99-128.

- Should the treaty authority of the United States Senate be curtailed? 1943. Cong. Digest.
- Simpson, W. H. Legal aspects of executive agreements. 24 *Ia. L. Rev.* 67-88.
- Simpson, W. H. Uses of executive agreements in the settlement of international reclamations. 1938. 8 *Detroit L. Rev.* 23-38.
- Skillin, E., Jr. Postwar treaty making; inquiry into current American procedure in the light of present needs. 1943. 39 *Commonweal.* 110-112.
- Smith, Justin H. *The Annexation of Texas.* New York, 1911.
- Spindler, J. F. Executive agreements and the proposed constitutional amendments to the treaty power. 1953. 51 *Mich. L. Rev.* 1202-17.
- Stason, E. B. Forum on Current Problems in International Law. 1948. 47 *Mich. L. Rev.* 1-71.
- Stinson, Joseph Whitla. *The Supreme Court and the treaties.* 1924. 73 *U. Pa. L. Rev.* 1.
- Stinson, Joseph Whitla. Treaties made or which shall be made under the authority of the United States. 1923. 7 *Minn. L. Rev.* 113.
- Stone, I. M. The House of Representatives and the treaty-making power. 1929. 17 *Ky L.J.* 216-57.
- Story, Joseph. *Commentaries on the Constitution of the United States.* Boston, Little, Brown and Company. 1891. 2 vols.
- Sturges, W. A. World Law and Order—The Quest for. 1948. 22 *Tul. L. Rev.* 558-68.
- Sutherland, A. E. The Bricker Amendment, executive agreements, and imported potatoes. 1953. 67 *Harv. L. Rev.* 281-92.
- Sutherland, A. E., Jr. Restricting the treaty power. 1952. 65 *Harvard L. Rev.* 1305-8.
- Sutherland, George. *Constitutional power and world affairs.* New York, Columbia Univ. Press, 1919. 202 p.
- Sutherland, William Angus. *Notes on the Constitution of the United States.* San Francisco, Bancroft-Whitney Co., 1904. 973 p.
- Taft, William Howard. *Four aspects of civil duty.* New York, Charles Scribner's Sons. 1908.
- Taft, William Howard. *Our chief magistrate and his powers.* New York, Columbia Univ. Press. 1916.
- Tansill, C. C. The Treaty-Making Powers of the Senate. 1924. 18 *Amer. J. of Int. Law.* 459.
- Teller, Henry M. Power of Congress over treaties. 42 *Congressional Record.* 6461-6463.
- Tennant, J. S. Judicial process of treaty interpretation in the United States Supreme Court. 1932. 30 *Mich. L. Rev.* 1016-39.
- Thacher, Archibald G. The North Atlantic Treaty: "Shield against aggression." New York, Purcell-Davison. 1949. 50 p.
- Thayer, William Roscoe. *Life and Letters of John Hay.* 2 vols. Boston, 1912.
- Thirion, N. B. Conflict Between Treaties, Federal and State Laws. 1944. 19 *Notre Dame Lawyer.* 305-9.

- Thompson, B. M. The power of the Senate to amend a treaty. 1905. 3 Mich. L. Rev. 427-441.
- Thompson, G. Constitutional law—separation of powers—current proposals to limit international compacts by the United States government. 1953. 29 N.D.L. Rev. 170-9.
- Thompson, L. L. State sovereignty and the treaty making power. 1923. 11 Calif. L. Rev. 242-58.
- Thorpe, Francis Newton. The constitutional history of the United States. 1765-1895. Chicago, Callaghan & Co., 1901. 3 v.
- Tiffany, Joel. A treatise on government, and constitutional law. Albany, W. C. Little, 1867.
- Tondel, L. M., Jr. Law by treaty and the Constitution. 1952. U.S.A. 14-21.
- Treaties, conventions, international acts, protocols and agreements. Edited by William M. Malloy. Washington, G.P.O., 1910. 2 vols.
- Treaties and executive agreements. S. Hearing before a Subcommittee of the Comm. of the Judiciary on S.J. Res. 1 and 43. 83.1.
- Treaties and other international acts of the United States. Edited by Hunter Miller. Washington, G.P.O. 1933.
- Treaties and the Constitution—alien property rights. 1937. 37 Colum. L. Rev. 1361-73.
- Treaty makers need senators' help. 1945. 217 Sat. Eve. Post. 104.
- Treaty-making power. 1945. 412 Int. Concil. 434-5.
- Treaty-making power: a rejoinder. 1914. 199 N. Am. Rev. 893-901.
- The treaty-making power. Can the President and Senate set aside the law and establish free-trade? 1902. 29 Am. Econ. 62-63.
- Treaty-Making Power—Effect of Treaty on State Alien Land Law. 1948. 2 Rutgers U.L. Rev. 273-6.
- The treaty making power of the United States. New York, The Banks Law Publishing Co., 1907. 62 p.
- Treaty making powers of the United States Senate; fact material and pro and con discussion. 1943. 22 Cong. Digest. 227-56.
- The treaty-making powers under the Constitution. 1901. 11 Yale L.J. 69-79.
- Treaty Power—Its Scope and Limitations Under the Constitution. 1951. 19 Geo. Wash. L. Rev. 422-38.
- Tucker, Henry St. George. Constitutionality of the covenant of the League of Nations. 1919. 89 Central L.J. 79.
- Tucker, Henry St. George. Limitations on the treaty-making power under the Constitution of the United States. Boston, Little, Brown and Co., 1915. 444 p.
- Tucker, Henry St. George. Treaty making power under the constitution. U.S. Congress 63.2 Senate Doc. 539. 11 p.
- Tucker, Henry St. George. View of the Constitution of the United States. 1 Blackstone's Commentaries. 140-377. Philadelphia. 1803.
- Tucker, John Randolph. The Constitution of the United States. Chicago, Callaghan & Co., 1899. 2 v.
- Unconstitutional treaties. 1834. 11 Am. Jurist. 305-308.

- United Nations Charter—Its Application as a Treaty to State Law. 1950. 30 B.U.L. Rev. 555-61.
- U.S. Congress. House. Committee on the Judiciary. Amendment to Constitution relative to the making of treaties. Hearings before the subcommittee no. 3 on H.J. Res. 6. 78.2 1944. Supt. of Doc., Washington, D.C. 141 p.
- U.S. Congress. House. Committee on the Judiciary. Amendment to the Constitution with respect to treaty ratification. Report to accompany H.J. Res. 603. 79.1 H. Rept. 139. Washington, D.C. 10 p.
- U.S. Congress. Senate. Committee on the Judiciary. Treaties and executive agreement relative to treaties and executive agreements. Report together with minority views to accompany S.J. Res. 1. Washington, U.S. Govt. Print. Off., 1953. 63 p. 83d Cong., 1st Sess. Senate. Report no. 412.
- U.S. Congress. Senate. Committee on the Judiciary. Treaties and executive agreements. Hearings before a subcommittee of the Committee on the Judiciary, United States Senate, Eighty-third Congress, first session, on S.J. Res. 1. February 18 . . . 1953. Washington, U.S. Govt. Print. Off., 1953. 1267 p.
- U.S. Congress. Senate. Compilation of treaty reservations. S. Document 135 66.1. 1919. 10 p.
- U.S. Dept. of State—Statement before subcommittee of the Senate Committee on the Judiciary on S.J. Res. 1 and S.J. Res. 43. April 6, 1953.
- U.S. Dept. of State. The treaty-making power in various countries. Washington, U.S. Govt. Print. Off., 1919. 89 p.
- United States—Foreign Relations. Recognition. Power of the President to Negotiate Treaties, and Methods of Recognizing a New State. Washington, Govt. Printing Office. 1921. 56 p.
- Vallance, W. R. Two-thirds Rule as to Treaties—A Change Affirmed. 1945. 68 N.Y.S.B.A. 184-92.
- Vanderbilt, A. T. The doctrine of the separation of powers and its present day significance. 1952. Univ. of Nebraska. 144 p.
- Vanderlip, F. A. Back to the Constitution. 1923. 9 Amer. B.A.J. p. 339.
- Van Der Zanden, Jan. Treaties prevail over national law (Verdrag gaat voor wer, ook in nationali rechtsbetrekkinsis. 1952. Zwolle. W.E.J. Tjeek Willink. 506-508.
- Van Meter, W. G. Obligations of the United States under the ILO social security convention [dangers of the treaty making process as a substitute for Congressional legislation . . .] Jan.-Feb. 1953. Am. Econ. Security. 33-8.
- Virginia Law Register. [Editorial] Can an unconstitutional law be made constitutional by a treaty? 1918. 4 Virginia L. Register. 305-307.
- Wagner, Wienczyslaw J. The Colonial Airlines case: treaties and executive agreements relating to aviation. 1952. Wash. U.L.Q. 211-38.
- Warren, Charles. Presidential declaration of independence. 1930. 10 Boston Univ. L. Rev. 1-35.
- Warren, Charles. The Mississippi River and the treaty clause of the constitution. 1934. 2 Geo. Wash. L. Rev. 271.

- Warren, Charles. *The Making of the Constitution*. Boston, Little, Brown and Company. 1937. 832 p.
- Washington, George. *Writings*, ed. by Jared Sparks. Vol. II. New York, Harper & Bros. 1848.
- Watson, David Kemper. *The Constitution of the United States, its history, application and construction*. Chicago, Callaghan & Co. 1910. 2 v.
- Webster, Bethuel M. Amend in haste, repent at leisure. Notes for a discussion of current proposals to amend the Constitution at the meeting of the New York State Bar Association. 1953. 4 p.
- Webster, Bethuel M. Let's take a good look. Notes for a speech on current proposals to amend the Constitution at the annual meeting of the American Newspaper Publishers Association. 1953. 9 p.
- Weinfeld, Abraham C. Are labor conditions a proper subject of international conventions . . . ? 1935. 24 Calif. L. Rev. 275-87.
- Weinfeld, Abraham C. What Did the Framers of the Federal Constitution Mean by "Agreements or Compacts"? 1936. 3 U. of Chi. L. Rev. 453.
- Welch, T. J. Treaties and executive agreements. 1953. 41 Ill. B.J. 93-4.
- Wharton, Francis. *Digest of International Law*. 8th ed. Edited by Richard Henry Dana, Jr. Boston, Little, Brown & Co. 1866.
- What should we do about Bricker amendment? Preserve the treaty-making power, by Dana C. Backus; Curtail the treaty-making power, by John W. Bricker. 1953. For. Pol. Bul. 4-6.
- Wheeler, Paper on treaty-making power of the Government of the United States in its international aspect. London, 1907.
- Wheeler, Everett P. The treaty-making power of the government of the United States in its international aspects. 1908. 17 Yale L.J. 151-161.
- When are Treaties Self-Executing? 1952. 31 Nebraska Law Rev. 463-474.
- When self-executing, treaties relating to patent rights. 1930. 28 Mich. L. Rev. 630-1.
- Whitlow, J. M. Should the treaty clause of the U.S. Constitution be amended in the light of the provision of the United Nations Charter? 1953. 31 Phi Delta Delta. 9-15.
- Whittington, W. V. Treaties and their legal effects. 1940. 2 U.S. Dept State Bul. 502-6.
- Wickersham, George W. *The Senate and Our Foreign Relations*. 1923. 2 Foreign Affairs. 177-192.
- Wiggins, P. K. The treaty making power—is a constitutional amendment necessary? 1953. Bklyn. Bar. 110-17.
- Wiley, Alexander. America's legal experts oppose Bricker amendment 15-0. Remarks in the Senate. 1953. 99 Congressional record. 8880-8883.
- Wiley, Alexander. Senate joint resolution 1—refutation of comments by Senator Bricker on minority views of Senate Judiciary Committee. Extension of remarks. 1953. 99 Congressional record. A4610-4613.
- Willoughby, Westel Woodbury. *The making of the Constitution*, 2nd ed. New York, 1929.

- Willoughby, Westel Woodbury. *The Constitutional Law of the United States*. New York, Baker, Voorhis & Company. 1910. 2 vols.
- Willoughby, Westel Woodbury. *Principles of Legislative Organization and Administration*. The Brookings Institution. Washington. 1934.
- Wilson, James, and M'Kean, Thomas. *Commentaries on the Constitution of the United States of America*. London, Printed for J. Debrett, 1792.
- Wilson, Robert R. Access-to-courts provisions in United States commercial treaties. 1953. 47 *Amer. J. Int. L.* 20-48.
- Wilson, Robert R. *The international law standard in treaties of the United States*. Cambridge, Harvard University Press. 1953. 321 p.
- Wilson, Woodrow. *Constitutional Government in the United States*. New York, Columbia Univ. Press. 1921.
- Wise, J. C. Unconstitutionality of "foreign legislative contracts." 1932. 18 *Va. L. Rev.* 875-85.
- Wood, T. A. The federal treaty power and the reserved powers of the states. 1953. 21 *J.B.A. Kan.* 277-81.
- Woolsey, Theodore S. Treaty-making under the United States Constitution. 1902. No. 40 *Journal of Social Science*. 83-95.
- Wright, H. Two-thirds Vote of the Senate in Treaty-Making. 1944. 38 *Am. J. Int. Law.* 643-50.
- Wright, Quincy. Congress and the ratification of treaties—the U.S. and international agreements. 1945. 411 *Int. Concil.* 363-98.
- Wright, Quincy. Congress and the treaty making power. 1952. *Amer. Soc. Int. Law, Proceeding.* 43-58.
- Wright, Quincy. Constitutional procedure in the United States for carrying our obligations for military sanctions. 1944. 38 *Amer. J. Int. L.* p. 678.
- Wright, Quincy. Constitutionality of treaties. 1919. 13 *Am. J. Internat. L.* 242-66.
- Wright, Quincy. *The Control of American Foreign Relations*. New York, Macmillan, 1922, 412 p.
- Wright, Quincy. Treaties and the Constitutional separation of powers. 1918. 12 *Amer. J. Int. L.* p. 64.
- Wright, Quincy. *The United States and International Agreements*. 1944. 38 *Am. J. Int. L.* 341.
- Wriston, Henry M. *Executive Agents in American Foreign Relations*. Baltimore, Johns Hopkins Press, 1929. 874 p.
- Young, Richard. The development of international law. 1952. 38 *A.B.A.J.* 513-15.

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